

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Docket Nos. 18-2012, 18-2225, 18-2249, 18-2253, 18-2281,
18-2332, 18-2416, 18-2417, 18-2418, 18-2419, 18-2422,
18-2650, 18-2651, 18-2661, 18-2724, and 19-1385

In re National Football League Players' Concussion Injury Litigation

**JOINT APPENDIX
Volume III of XIII, Pages JA966-JA1638**

On appeal from Orders of the United States District Court for
the Eastern District of Pennsylvania (Hon. Anita B. Brody),
in No. 2:14-md-02323-AB and MDL No. 2323

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TABLE OF CONTENTS

	<u>Page</u>
Dkt. 9960, Aldridge Objectors' Notice of Appeal, filed May 3, 2018	JA1
Dkt. 10036, Aldridge Objectors' Notice of Appeal, filed June 1, 2018	JA6
Dkt. 10043, Objector Miller's Notice of Appeal, filed June 6, 2018	JA11
Dkt. 10044, Objector Anderson's Notice of Appeal, filed June 6, 2018	JA13
Dkt. 10075, Mitnick Law Office's Notice of Appeal, filed June 8, 2018	JA15
Dkt. 10079, Anapol Weiss, P.C.'s Notice of Appeal, filed June 15, 2018	JA17
Dkt. 10095, Kreindler & Kreindler, LLP's Notice of Appeal, filed June 22, 2018	JA19
Dkt. 10097, Faneca Objectors' Notice of Appeal, filed June 22, 2018	JA21
Dkt. 10099, Zimmerman Reed LLP's Notice of Appeal, filed June 22, 2018	JA24
Dkt. 10101, Armstrong Objectors' Notice of Appeal, filed June 25, 2018	JA27
Dkt. 10102, Pope McGlamry, P.C.'s Notice of Appeal, filed June 25, 2018	JA29
Dkt. 10133, Faneca Objectors' Amended Notice of Appeal, filed July 13, 2018.....	JA32
Dkt. 10142, Anapol Weiss, P.C.'s Notice of Appeal, filed July 17, 2018.....	JA35

Dkt. 10164, Aldridge Objectors' Notice of Appeal, filed July 24, 2018.....	JA37
Dkt. 10166, Kreindler & Kreindler, LLP's Notice of Appeal, filed July 25, 2018.....	JA40
Dkt. 10188, Class Counsel Locks Law Firm's Notice of Appeal, filed Aug. 2, 2018	JA42
Dkt. 10428, Aldridge Objectors' Notice of Appeal, filed Feb. 15, 2019	JA45
Dkt. 9860, Memorandum Opinion regarding: Total Amount of Common-Benefit Attorneys' Fees, filed Apr. 5, 2018	JA48
Dkt. 9861, Order regarding: Total Amount of Common-Benefit Attorneys' Fees, filed Apr. 5, 2018.....	JA68
Dkt. 9862 Memorandum Opinion regarding: IRPA Fee Cap, filed Apr. 5, 2018	JA70
Dkt. 9863, Order regarding: IRPA Fee Cap, filed Apr. 5, 2018.....	JA80
Dkt. 9876, Order regarding: Payments of Incentive Awards and Expenses, filed Apr. 12, 2018	JA82
Dkt. 10019, Explanation and Order regarding: Allocation of Common-Benefit Attorneys' Fees, filed May 24, 2018	JA84
Dkt. 10042, Order regarding: Alexander Objectors' Motion for Reconsideration/New Trial, filed June 5, 2018	JA111
Dkt. 10103, Order regarding: Payment of Attorneys' Fees and Expenses, filed June 27, 2018.....	JA113
Dkt. 10104, Order regarding: Withholdings for Common Benefit Fund, filed June 27, 2018.....	JA115
Dkt. 10127, Order Denying Locks Law Firm's Motion for Reconsideration of the Court's Explanation and Order, filed July 10, 2018.....	JA117
Dkt. 10378, Explanation and Order, filed Jan. 16, 2019	JA118

Civil Docket for Case No.: 2:12-md-2323-AB (E.D. Pa.).....	JA127
Dkt. 4, Case Management Order No. 1, filed Mar. 6, 2012	JA693
Dkt. 52, Order Modifying Case Management Order No.1, filed Apr. 2, 2012	JA718
Dkt. 64, Case Management Order No. 2, filed Apr. 26, 2012.....	JA721
Dkt. 71, Transcript of Apr. 25, 2012 Organizational Courtroom Conference, filed May 10, 2012	JA726
Dkt. 72, Case Management Order No. 3, filed May 11, 2012.....	JA764
Dkt. 2583, Stipulation and Order regarding: Scheduling, filed July 16, 2012.....	JA767
Dkt. 2642, Plaintiffs' Amended Master Administrative Long-Form Complaint, filed July 17, 2012.....	JA773
Dkt. 3384, Order Denying Plaintiffs' Motion for Discovery, filed Aug. 21, 2012	JA863
Dkt. 3587, Order regarding: Appointment of Defendant's Co-Liaison Counsel, filed Aug. 29, 2012	JA864
Dkt. 3698, Plaintiffs' Uncontested Motion for Order Establishing a Time and Expense Reporting Protocol and Appointing Auditor, filed Sept. 7, 2012	JA865
Dkt. 3710, Order Granting Plaintiffs' Uncontested Motion for Order Establishing a Time and Expense Reporting Protocol, filed Sept. 11, 2012	JA948
Dkt. 4135, Order Granting Plaintiffs' Uncontested Motion for Extension of Deadline To File Initial Time Expense Reports, filed Oct. 31, 2012.....	JA960
Dkt. 4143, Order Granting Plaintiffs' Uncontested Motion for Additional Extension of Deadline To File Initial Time and Expense Reports, filed Nov. 8, 2012	JA961

Dkt. 5128, Order regarding: Appointment of a Mediator, filed July 8, 2013.....	JA962
Dkt. 5235, Order regarding: Proposed Settlement, filed Aug. 29, 2013	JA964
Dkt. 5634, Motion of Proposed Co-Lead Counsel for Preliminary Approval of the Class Settlement Agreement, filed Jan. 6, 2014.....	JA966
Dkt. 5634-2, Exhibit B, Class Action Settlement Agreement.....	JA1003
Dkt. 5657, Memorandum Opinion Denying Preliminary Approval, filed Jan. 14, 2014	JA1471
Dkt. 5658, Order Denying Preliminary Approval Without Prejudice, filed Jan. 14, 2014	JA1483
Dkt. 5910, Order regarding: Court's Jan. 14, 2014 Order, filed Apr. 16, 2014	JA1484
Dkt. 5911, Stipulation and Order regarding: Apr. 15, 2014 Order, filed Apr. 16, 2014	JA1485
Dkt. 6019, Faneca Objectors' Motion To Intervene filed May 5, 2014	JA1487
Dkt. 6019-1, Memorandum of Law in Support	JA1572
Dkt. 6073, Co-Lead Class Counsel's Motion for Order Granting Preliminary Approval of Class Action Settlement, filed June 25, 2014.....	JA1639
Dkt. 6073-4, Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Preliminary Approval of Settlement, filed June 25, 2014	JA1929
Dkt. 6082, Response in Opposition to Motion for Approval of Class Action Settlement, filed July 2, 2014	JA2041
Dkt. 6083, Memorandum Opinion Granting Preliminary Approval, filed July 7, 2014.....	JA2160
Dkt. 6084, Order Granting Preliminary Approval, filed July 7, 2014.....	JA2121

Dkt. 6087, Class Action Settlement Agreement as of June 25, 2014, filed July 7, 2014.....	JA2151
Dkt. 6107, Order Denying Faneca Objectors' Motion To Intervene, filed July 29, 2014.....	JA2313
Dkt. 6109, Faneca Objectors' Reply in Further Support of Motion To Intervene, filed July 29, 2014	JA2314
Dkt. 6126, Response in Opposition regarding: Plaintiffs' Motion for Extension of Time To File Response/Reply to Motion To Permit Access to Medical, Actuarial, and Economic Information, filed Aug. 8, 2014.....	JA2330
Dkt. 6160, Order Directing Special Master To File Actuarial Reports and Supplemental Information or Tabulations, filed Sept. 8, 2014	JA2333
Dkt. 6166, Order Denying Petition of Objecting Class Members for Leave to Appeal District Court's Order Granting Settlement, filed Sept. 11, 2014	JA2334
Dkt. 6167, NFL Concussion Liability Forecast, filed Sept. 12, 2014	JA2336
Dkt. 6167-1, Exhibit A, Supplemental Schedules	JA2407
Dkt. 6167-2, Exhibit B, Supplemental Schedules	JA2409
Dkt. 6167-3, Exhibit C, Supplemental Schedules	JA2411
Dkt. 6167-4, Exhibit D, Supplemental Schedules	JA2466
Dkt. 6168, Report of the Segal Group to Special Master Perry Golkin, filed Sept. 12, 2014	JA2468
Dkt. 6168-1, Exhibit A, Part 1, Player Database	JA2522
Dkt. 6168-2, Exhibit A, Part 2, Player Database	JA2677
Dkt. 6168-3, Exhibit B, Plaintiff's Sample Data	JA2809
Dkt. 6168-4, Exhibit C, Screenshot of Plaintiff's Database.....	JA2879

Dkt. 6168-5, Exhibit D, Screenshot of Model Assumptions as Entered into Model	JA2881
Dkt. 6168-6, Exhibit E, Cash Flow Analysis	JA2884
Dkt. 6168-7, Exhibit F, Supplemental Schedules.....	JA2889
Dkt. 6169, Faneca Objectors' Motion for Discovery, filed Sept. 13, 2014	JA2960
Dkt. 6169-1, Memorandum of Law in Support of Motion for Limited Discovery.....	JA2963
Dkt. 6169-2, Exhibit A, Limited Discovery Requests.....	JA2977
Dkt. 6169-3, Exhibit B, Information on NFL Football Concussions	JA2996
Dkt. 6201, Faneca Objectors' Objections, filed Oct. 14, 2014.....	JA3003
Dkt. 6201-1, Declaration of Eric R. Nitz, filed Oct. 6, 2014.....	JA3128
Dkt. 6201-2, Exhibits 1-5	JA3143
Dkt. 6201-3, Exhibits 6-8	JA3184
Dkt. 6201-4, Exhibits 9-12	JA3214
Dkt. 6201-5, Exhibits 13-15	JA3286
Dkt. 6201-6, Exhibits 16-25	JA3385
Dkt. 6201-7, Exhibits 26-30	JA3405
Dkt. 6201-8, Exhibits 31-36	JA3434
Dkt. 6201-9, Exhibits 37-44	JA3463
Dkt. 6201-10, Exhibits 45-51	JA3492
Dkt. 6201-11, Exhibits 52-59	JA3571
Dkt. 6201-12, Exhibits 60-66	JA3752
Dkt. 6201-13, Exhibits 67-71	JA3752

Dkt. 6201-14, Exhibits 72-76	JA3776
Dkt. 6201-15, Exhibits 77-82	JA3819
Dkt. 6201-16, Declaration of Robert A. Stern, filed Oct. 6, 2014.....	JA3858
Dkt. 6201-17, Declaration of Sean Morey, filed Oct. 6, 2014	JA3919
Dkt. 6211, Faneca Objectors' Motion for Leave To File a Reply in Support of Motion for Leave To Conduct Limited Discovery, filed Oct. 13, 2014.....	JA3923
Dkt. 6211-1, Memorandum of Law in Support of Movants' Motion for Leave To File	JA3926
Dkt. 6232, Faneca Objectors' Supplemental Objections, filed Oct. 14, 2014.....	JA3928
Dkt. 6232-1, Declaration of Sam Gandy and Exhibits	JA3933
Dkt. 6233, Armstrong Objectors' Amended Objection to the June 25, 2014 Class Action Settlement Agreement, filed Oct. 14, 2014	JA3971
Dkt. 6233-1, Declaration of Drs. Brent E. Masel and Gregory J. O'Shanick in Support of BIAA's Motion for Leave to File <i>Amicus Curiae</i> Brief	JA4037
Dkt. 6233-2, Declaration of Richard L. Coffman.....	JA4049
Dkt. 6233-3, Declaration of Mitchell Toups	JA4051
Dkt. 6233-4, Declaration of Jason Webster.....	JA4053
Dkt. 6237, Aldridge Objectors' Objections to June 25, 2014 Class Action Settlement Agreement, filed Oct. 14, 2014.....	JA4055
Dkt. 6244, Faneca Objectors' Motion To Set Scheduling Conference Before Nov. 19, 2014, filed Oct. 15, 2014.....	JA4066
Dkt. 6252, Faneca Objectors' Motion for Production of Evidence, filed Oct. 21, 2014.....	JA4073

Dkt. 6339, Faneca Objectors' Notice regarding: Intent To Appear at Fairness Hearing, filed Nov. 3, 2014	JA4078
Dkt. 6344, Order that Steven Molo Will Coordinate the Arguments of the Objectors at the Fairness Hearing, filed Nov. 4, 2014	JA4111-1
Dkt. 6353, Letter from Mitchell A. Toups to Judge Brody dated Sept. 3, 2014 regarding: Objection to June 25, 2014 Class Action Settlement by Armstrong Objectors, filed Nov. 3, 2014	JA4112
Dkt. 6420, Faneca Objectors' Supplemental Objections., filed Nov. 11, 2014	JA4144
Dkt. 6423-5, Declaration of Orran L. Brown, Sr., filed Nov. 12, 2014	JA4157
Dkt. 6423-6, Supplemental Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Final Approval of Settlement and Certification Class and Subclasses, filed November 12, 2014	JA4236
Dkt. 6423-17, Declaration of Kenneth C. Fischer, M.D., filed Nov. 12, 2014	JA4249
Dkt. 6423-18, Declaration of Christopher C. Giza, M.D., filed Nov. 12, 2014	JA4267
Dkt. 6423-19, Declaration of David Allen Hovda, Ph.D., filed Nov. 12, 2014	JA4316
Dkt. 6423-20, Declaration of John G. Keilp, Ph.D., filed Nov. 12, 2014	JA4405
Dkt. 6423-21, Declaration of Thomas Vasquez, Ph.D., filed Nov. 12, 2014	JA4452
Dkt. 6425, Faneca Objectors' Statement regarding: Fairness Hearing, filed Nov. 14, 2014	JA4539
Dkt. 6428, Notice of Counsel Permitted To Speak at Fairness Hearing, filed Nov. 17, 2014	JA4542

Dkt. 6434, Faneca Objectors' Objections, filed Nov. 18, 2014	JA4544
Dkt. 6435, Faneca Objectors' Statement regarding: Nov. 19, 2014 Fairness Hearing, filed Nov. 18, 2014	JA4550
Dkt. 6455, Post-Fairness Hearing Supplemental Briefing of Objectors regarding: Faneca Objectors' Motion for Final Order and Judgment, filed Dec. 2, 2014	JA4551
Dkt. 6455-1, Supplemental Declaration of Robert Stern, filed Dec. 2, 2014	JA4591
Dkt. 6455-2, Supplemental Declaration of Sam Gandy and Exhibits, filed Dec. 2, 2014	JA4598
Dkt. 6455-3, Declaration of Patrick Hof and Exhibit, filed Dec. 2, 2014	JA4647
Dkt. 6455-4, Declaration of Jing Zhang and Exhibit, filed Dec. 2, 2014	JA4769
Dkt. 6455-5, Declaration of Martha Shenton and Exhibit, filed Dec. 2, 2014	JA4792
Dkt. 6455-6, Declaration of Charles Bernick and Exhibit, filed Dec. 2, 2014	JA4926
Dkt. 6455-7, Declaration of Michael Weiner and Exhibit, filed Dec. 2, 2014	JA4940
Dkt. 6455-8, Declaration of James Stone and Exhibit, filed Dec. 2, 2014	JA5099
Dkt. 6455-9, Declaration of Thomas Wisniewski and Exhibit, filed Dec. 2, 2014	JA5125
Dkt. 6455-10, Declaration of Steven T. DeKosky and Exhibit, filed Dec. 2, 2014	JA5176
Dkt. 6455-11, Declaration of Wayne Gordon and Exhibit, filed Dec. 2, 2014	JA5230

Dkt. 6455-12, Supplemental Declaration of Eric Nitz, filed Dec. 2, 2014	JA5270
Dkt. 6455-13, Exhibits 1-9	JA5275
Dkt. 6455-14, Exhibits 10-18	JA5365
Dkt. 6455-23, Exhibits 20-27	JA5457
Dkt. 6461, Faneca Objectors' Motion for Disclosure of Documents Relevant to Fairness of Settlement, filed Dec. 9, 2014	JA5508
Dkt. 6462, Faneca Objectors' Motion for Disclosure of Financial Relationships with Experts, filed Dec. 9, 2014.....	JA5515
Dkt. 6463, Amended Transcript of Nov. 19, 2014 Fairness Hearing, filed Dec. 11, 2014.....	JA5522
Dkt. 6469, Faneca Objectors' Notice regarding: Fairness Hearing Slides, filed Dec. 22, 2014	JA5774
Dkt. 6470, Faneca Objectors' Notice regarding: Supplemental Authority, filed Dec. 23, 2014	JA5814
Dkt. 6470-1, Memorandum Opinion and Order	JA5818
Dkt. 6479, Order Directing Settling Parties To Address Certain Issues by Feb. 13, 2015, filed Feb. 2, 2015	JA5839
Dkt. 6481, Class Counsel and the NFL Parties' Joint Submission regarding: Feb. 2, 2015 Order, filed Feb. 13, 2015	JA5842
Dkt. 6481-1, Exhibit A, Class Action Settlement Agreement (As Amended).....	JA5853
Dkt. 6481-2, Exhibit B, Redline Class Action Settlement Agreement (As Amended)	JA6015
Dkt. 6503, Armstrong Objectors' Supplemental Objection to the Amended Class Action Settlement, filed Apr. 13, 2015.....	JA6124
Dkt. 6508, Order Ruling on Various Motions, filed Apr. 21, 2015	JA6129

Dkt. 6509, Memorandum Opinion regarding: Final Approval of Amended Settlement, filed Apr. 22, 2015	JA6131
Dkt. 6510, Final Order and Judgment regarding: Final Settlement Approval, filed Apr. 22, 2015	JA6263
Dkt. 6534, Amended Final Order and Judgment, filed May 8, 2015	JA6270
Dkt. 6535, Order regarding: Amended Final Order, filed May 11, 2015	JA6278
Dkt. 7070, Faneca Objectors' Petition for an Award of Attorneys' Fees, filed Jan. 11, 2017.....	JA6280
Dkt. 7070-1, Memorandum of Law in Support, filed Jan. 11, 2017	JA6283
Dkt. 7070-2, Declaration of Steven Molo, filed Jan. 11, 2017	JA6338
Dkt. 7151, Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, filed Feb. 13, 2017.....	JA6555
Dkt. 7151-1, Memorandum of Law in Support, filed Feb. 13, 2017	JA6558
Dkt. 7151-2, Declaration of Christopher Seeger, filed Feb. 13, 2017	JA6640
Dkt. 7151-6, Declaration of Levin Sedran & Berman, filed Feb. 13, 2017	JA6723-1
Dkt. 7151-7, Declaration of Gene Locks, filed Feb. 13, 2017	JA6724
Dkt. 7151-8, Declaration of Steven C. Marks, filed Feb. 13, 2017	JA6755
Dkt. 7151-10, Declaration of Sol H. Weiss, filed Feb. 13, 2017	JA6785
Dkt. 7151-18, Exhibit O, Declaration of Samuel Issacharoff, filed Feb. 13, 2017	JA6814

Dkt. 7151-27, Exhibit X, Declaration of Charles Zimmerman, filed Feb. 13, 2017	JA6849
Dkt. 7151-28, Exhibit Y, Brian T. Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Awards</i> , JOURNAL OF EMPIRICAL LEGAL STUDIES (Dec. 2010), filed Feb. 13, 2017	JA6883
Dkt. 7161, Miller Objector's Opposition to Co-Lead Class Counsel's Fee Petition, filed Feb. 17, 2017	JA6920
Dkt. 7176, Alexander Objectors' Motion for Entry of Case Management Order Governing Applications for Attorney Fees, filed Feb. 21, 2017	JA6933
Dkt. 7228, Co-Lead Class Counsel's Motion for Extension of Time To File Response/Reply Memorandum in Support of Their Fee Petition and To Set Coordinated Briefing Schedule, filed Feb. 28, 2017	JA6943
Dkt. 7229, Objector Miller's Response in Opposition to Fee Applications and Co-Lead Class Counsel's Motion To Set Coordinated Briefing Schedule, filed Mar. 1, 2017.....	JA6948
Dkt. 7230, Armstrong Objectors' Petition for an Award of Attorneys' Fees, filed Mar. 1, 2017	JA6951
Dkt. 7231, Objector Miller's Corrected Response in Opposition to Fee Applications and Co-Lead Class Counsel's Motion To Set Coordinated Briefing Schedule, filed Mar. 1, 2017.....	JA6954
Dkt. 7232, Armstrong Objectors' Memorandum of Law in Support of Petition for an Award of Attorneys' Fees, filed Mar. 1, 2017.....	JA6957
Dkt. 7232-1, Exhibit A, Declaration of Richard L. Coffman in Support of the Armstrong Objectors' Petition for Award of Attorneys' Fees	JA6992
Dkt. 7232-2, Exhibit B, Declaration of Mitchell A. Toups in Support of the Armstrong Objectors' Petition for Award of Attorneys' Fees.....	JA6998

Dkt. 7232-3, Exhibit C, Declaration of the Webster Law Firm in Support of the Armstrong Objectors' Petition for an Award of Attorneys' Fees	JA7007
Dkt. 7232-4, Exhibit D, Declaration of the Warner Law Firm in Support of the Armstrong Objectors' Petition for an Award of Attorneys' Fees	JA7009
Dkt. 7233, Faneca Objectors' Response to Motion regarding: Co-Lead Class Counsel's Motion for Extension of Time, filed Mar 1, 2017	JA7014
Dkt. 7237, Anderson Objector's Supplemental Objection to Faneca Objector's to Fee Petition, filed Mar. 1, 2017	JA7017
Dkt. 7238, Order Granting Co-Lead Class Counsel's Motion for Extension of Time, filed Mar. 2, 2017.....	JA7022
Dkt. 7259, Stipulation and Proposed Order by NFL, Inc., NFL Properties LLC, Plaintiff(s), filed Mar. 8, 2017.....	JA7023
Dkt. 7261, Order regarding: Co-Lead Class Counsel's Fee Petition, filed Mar. 8, 2017.....	JA7026
Dkt. 7324, Order Considering the Uncontested Motion of Co-Lead Class Counsel for Order in Aid of Implementation of the Settlement Program, filed Mar. 23, 2017.....	JA7028
Dkt. 7344, Memorandum in Opposition to Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, filed Mar. 27, 2017.....	JA7036
Dkt. 7346, Memorandum in Opposition to Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees, filed Mar. 27, 2017.....	JA7046
Dkt. 7350, Response Objection and Memorandum in Opposition to Co-Lead Counsel's Petition for an Award of Attorneys' Fees, filed Mar. 27, 2017.....	JA7059
Dkt. 7354, Aldridge Objectors' Objections regarding: Co-Lead Class Counsel's Application for an Award of Attorneys' Fees, filed Mar. 27, 2017.....	JA7073

Dkt. 7355, Aldridge Objectors' Objections regarding: Co-Lead Class Counsel's Application for an Award of Attorneys' Fees, filed Mar. 27, 2017.....	JA7076
Dkt. 7356, Certain Plaintiffs' Response in Opposition to Petition for Adoption of Set-Aside of Five Percent of Each Monetary Award and Derivative Claimant Award, filed Mar. 27, 2017	JA7145
Dkt. 7360, Objection by Plaintiff(s) to Request for Attorneys' Fees and Holdback, filed Mar. 27, 2017	JA7150
Dkt. 7363, Notice of Joinder in Estate of Kevin Turner's Response and Limited Opposition to Co-Lead Counsel's Petition for an Award of Attorneys' Fees, filed Mar. 27, 2017.....	JA7160
Dkt. 7364, Application/Petition of Objectors Preston and Katherine Jones for Award of Attorneys' Fees, filed Mar. 27, 2017	JA7167
Dkt. 7366, Faneca Objectors' Preliminary Response in Support regarding: Petition for an Award of Attorney Fees and in Response to Dkts. 7151, 7161, 7230 and 7237, filed Mar. 27, 2017	JA7170
Dkt. 7366-1, Exhibit A, Declaration of Joseph Floyd	JA7188
Dkt. 7366-2, Exhibit B, Armstrong Objectors' Memorandum of Law.....	JA7223
Dkt. 7366-3, Exhibit C, Revised Summary of Expenses	JA7259
Dkt. 7367, Plaintiffs' Joinder to Objections regarding: Co-Lead Counsel's Petition for an Award of Attorneys' Fees, filed Mar. 27, 2017	JA7261
Dkt. 7370, Anderson Objector's Second Supplemental Notice of Fee Objections, filed Mar. 27, 2017	JA7264
Dkt. 7373, Plaintiffs' Objections to Co-Lead Class Counsel's Request for Five Percent Set Aside, filed Mar. 27, 2017	JA7269
Dkt. 7375, Plaintiffs' Notice of Joinder in Objections to Co-Lead Class Counsel's Petition for Fees, Reimbursements, and Adoption of Set-Aside Award, filed Mar. 28, 2017	JA7275

Dkt. 7403, Order Granting Deandra Cobb's Motion To Accept Objection to Five Percent Set-Aside File, filed Mar. 29, 2017	JA7277
Dkt. 7404, Plaintiffs' Response Objection regarding: Co-Lead Class Counsel's Petition for Five Percent Set-Aside, filed Mar. 29, 2017	JA7278
Dkt. 7409, Plaintiffs' Motion for Extension of Time To File Answer, filed Mar. 29, 2017.....	JA7287
Dkt. 7446, Order That Pursuant to Federal Rules of Civil Procedure 72b Referring All Petitions for Individual Attorney' Liens, filed Apr. 4, 2017	JA7289
Dkt. 7453, Order Granting Motion To Accept Joinder in Objections to Co-Lead Class Counsel's Petition for Fees, filed Apr. 6, 2017	JA7290
Dkt. 7463, Response in Opposition regarding: Motion for Joinder, filed Apr. 10, 2017	JA7291
Dkt. 7464, Co-Lead Class Counsel's Memorandum in Support regarding: Fee Petition, filed Apr. 10, 2017	JA7308
Dkt. 7464-1, Supplemental Seeger Declaration, filed Apr. 10, 2017	JA7385
Dkt. 7464-2, Exhibit Z, Declaration of Bradford R. Sohn	JA7396
Dkt. 7464-3, Exhibit AA, Petition to Appeal	JA7404
Dkt. 7464-4, Exhibit BB, Reply in Support	JA7437
Dkt. 7464-5, Exhibit CC, Corrected Opening Brief.....	JA7456
Dkt. 7464-6, Exhibit DD, Appellants' Reply Brief.....	JA7529
Dkt. 7464-7, Exhibit EE, Class Opposition to Motion for Judicial Notice	JA7558
Dkt. 7464-8, Exhibit FF, Appellants' Opposition to Motion to Expedite Appeals	JA7570
Dkt. 7464-9, Exhibit GG, Petition for a Writ of Certiorari	JA7574
Dkt. 7464-10, Exhibit HH, Petitioner's Reply Brief.....	JA7615

Dkt. 7464-11, Exhibit II, U.S. Supreme Court Docket for <i>Armstrong v. NFL</i>	JA7630
Dkt. 7464-12, Exhibit JJ, An Updated Analysis of the NFL Concussion Settlement.....	JA7635
Dkt 7464-13, Exhibit KK, Declaration of Orran. L. Brown, Sr.....	JA7733
Dkt. 7533, Aldridge Objectors' Objections regarding: Co-Lead Class Counsel's Omnibus Reply, filed Apr. 21, 2017.....	JA7738
Dkt. 7534, Aldridge Objectors' Motion for Leave To Serve Fee- Petition Discovery, filed Apr. 21, 2017	JA7750
Dkt. 7550, Faneca Objectors' Reply to Response to Motion for Attorney Fees, filed Apr. 25, 2017	JA7756
Dkt 7550-1, Expert Declaration of Joseph J. Floyd, filed Apr. 25, 2017	JA7776
Dkt. 7555, Reply in Support regarding: Jones Objectors' Fee Petition, filed Apr. 26, 2017	JA7785
Dkt. 7605, Co-Lead Class Counsel's Motion To Strike Aldridge Objectors' Objections as Unauthorized Sur-Reply, filed May 5, 2017.....	JA7790
Dkt. 7606, Co-Lead Class Counsel's Memorandum of Law regarding: Aldridge Objectors' Motion for Discovery and Objections as Unauthorized Sur-Reply, filed May 5, 2017.....	JA7793
Dkt. 7608, Armstrong Objectors' Reply regarding: Their Attorneys' Fee Petition, filed May 5, 2017.....	JA7820
Dkt. 7621, Mitnick Law Office's Brief and Statement of Issues in Support of Request for Review of Objectors' Fee Petition, filed May 9, 2017	JA7828
Dkt. 7626, Aldridge Objectors' Response in Opposition regarding: Co-Lead Class Counsel's Motion To Strike Aldridge Objectors' Objections as Unauthorized Sur-Reply, filed May 12, 2017.....	JA7844

- Dkt. 7627, Aldridge Objectors' Memorandum of Law regarding: Co-Lead Class Counsel's Motion To Strike Aldridge Objectors' Objections as Unauthorized Sur-Reply, filed May 12, 2017 JA7847
- Dkt. 7708, Faneca Objectors' Reply to Response to Motion regarding: Faneca Objectors' Motion for Attorney Fees and Mitnick Law Office's Brief and Statement of Issues, filed May 18, 2017 JA7856
- Dkt. 7710, Co-Lead Class Counsel's Reply to Response to Motion regarding: Co-Lead Class Counsel's Motion To Strike Aldridge Objectors' Objections as Unauthorized Sur-Reply, filed May 19, 2017 JA7863
- Dkt. 8310, Order To Show Cause regarding: Fees and Expenses, filed Aug. 23, 2017 JA7872
- Dkt. 8327, Co-Class Counsel's Response to Order To Show Cause and Request for Clarification and Extension of Time, filed Aug. 28, 2017 JA7891
- Dkt. 8330, Notice by Plaintiff(s) regarding: Co-Lead Class Counsel's Fee Petition, filed Aug. 29, 2017 JA7895
- Dkt. 8350, Aldridge Objectors' Response regarding: Aug. 23, 2017 Order, filed Aug. 31, 2017 JA7898
- Dkt. 8354, Co-Lead Class Counsel's Response in Opposition regarding: Notice by Plaintiff(s) For Appointment of Magistrate, filed Sept. 5, 2017 JA7909
- Dkt. 8358, Order regarding: the Court's Continuing and Exclusive Jurisdiction under Article XXVII of the Amended Class Action Settlement, filed Sept. 7, 2017 JA7913
- Dkt. 8364, Reply to Co-Lead Class Counsel's Response to Request To Appoint Magistrate Judge, filed Sept. 11, 2017 JA7916
- Dkt. 8367, Order Directing the Filing of Declarations regarding: Proposed Fee Allocation, filed Sept. 12, 2017 JA7920
- Dkt. 8372, Notice regarding: Professor William B. Rubenstein's Appointment as Advisor to Plaintiff's Steering Committee, filed Sept. 13, 2017 JA7921

Dkt. 8376, Order Appointing Professor Rubenstein as an Expert Witness on Attorneys' Fees, filed Sept. 14, 2017.....	JA7923
Dkt. 8395, Aldridge Objectors' First Supplement in Support of Objections, filed Sept. 20, 2017.....	JA7926
Dkt. 8396, Aldridge Objectors' Motion To Compel Compliance with Case Management Order No. 5, filed Sept. 20, 2017	JA7931
Dkt. 8440, Co-Lead Class Counsel's Response in Opposition regarding: Aldridge Objectors' Motion To Compel, filed Oct. 4, 2017.....	JA7933
Dkt. 8447, Seeger Declaration regarding: Proposed Fee Allocation Order, filed Oct. 10, 2017	JA7943
Dkt. 8447-1, Exhibit to Declaration of Christopher A. Seeger in Support of Proposed Allocation	JA7965
Dkt. 8447-2, Declaration of Brian T. Fitzpatrick	JA7967
Dkt. 8448, Order Directing Filing of Counter-Declarations regarding: Attorneys' Fees, filed Oct. 12, 2017	JA7980
Dkt. 8449, Aldridge Objectors' Reply to Co-Lead Class Counsel's Response to Their Motion To Compel Compliance with Case Management Order No. 5, filed Oct. 12, 2017	JA7981
Dkt. 8470, Co-Lead Class Counsel's Motion for Order Directing the Claims Administrator To Withhold Any Portions of Class Member Monetary Awards, filed Oct. 23, 2017	JA7987
Dkt. 8532, Armstrong Objectors' Response to Class Counsel's Proposed Allocation of Common Benefit Attorneys' Fees, filed Oct. 25, 2017.....	JA7992
Dkt. 8556, Counter-Declaration of Jason E. Luckasevic regarding: Fee Allocation, filed Oct. 26, 2017.....	JA7996
Dkt. 8653, Declaration of Craig R. Mitnick regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8005

Dkt. 8701, Co-Lead Class Counsel Anapol Weiss's Proposed Alternative Methodology for Fee Allocation, filed Oct. 27, 2017	JA8020
Dkt. 8709, Declaration of Gene Locks, Class Counsel, regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8051
Dkt. 8719, Counter- Declaration of Thomas V. Girardi regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8086
Dkt. 8720, Declaration of Anthony Tarricone in Opposition regarding: Fee Allocation, filed Oct. 27, 2017	JA8095
Dkt. 8720-1, Exhibit to Declaration of Anthony Tarricone	JA8107
Dkt. 8720-2, Kreindler & Kreindler LLP Opposition to Co-Lead Counsel's Petition for an Award of Common Benefit Attorneys' Fees	JA8109
Dkt. 8721, Declaration of Michael L. McGlamry regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8122
Dkt. 8722, Declaration of Charles S. Zimmerman regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8141
Dkt. 8723, Response by Neurocognitive Football Lawyers and The Yerid Law Firm In Support of Seeger Declaration regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8158
Dkt. 8724, Declaration of Derriel C. McCorvey regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8167
Dkt. 8725, Declaration of Lance H. Lubel regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8179
Dkt. 8726, Faneca Objectors' Response in Opposition to Seeger Declaration regarding: Fee Allocation, filed Oct. 27, 2017	JA8192
Dkt. 8727, Declaration of James T. Capretz regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8206
Dkt. 8728, Declaration of Steven C. Marks regarding: Fee Allocation, filed Oct. 27, 2017.....	JA8212

Dkt. 8900, Order Directing Filing of Omnibus Replies regarding: Counter-Declarations, filed Nov. 7, 2017	JA8215
Dkt. 8915, Notice by Class Counsel regarding: Settlement Implementation, filed Nov. 10, 2017	JA8216
Dkt. 8917, Notice by Mitnick Law Office, filed Nov. 10, 2017	JA8218
Dkt. 8929, Order regarding: Extension for Omnibus Reply, filed Nov. 17, 2017	JA8219
Dkt. 8934, Co-Lead Class Counsel's Omnibus Reply to Responses, Objections, and Counter-Declarations regarding: Fee Petition, filed Nov. 17, 2017	JA8221
Dkt. 8934-1, Supplemental Declaration of Brian T. Fitzpatrick, filed Nov. 17, 2017	JA8267
Dkt. 8937, Plaintiffs' Motion for Leave To File Sur-Reply Counter- Declaration of Jason E. Luckasevic regarding: Fee Allocation, filed Nov. 21, 2017	JA8270
Dkt. 8945, Zimmerman Reed LLP's Motion for Leave To File a Sur- Reply Declaration regarding: Fee Allocation, filed Nov. 22, 2017	JA8274
Dkt. 8963, Pope McGlamry, P.C.'s Motion for Leave To File Sur- Reply Declaration regarding: Fee Allocation, filed Nov. 28, 2017	JA8276
Dkt. 9508, Order Denying Motions for Leave To File Sur-Reply Declaration, filed Dec. 5, 2017	JA8279
Dkt. 9510, Order Denying the Aldridge Objectors' Motion To Compel Compliance with Case Management Order No. 5, filed Dec. 5, 2017	JA8280
Dkt. 9526, Export Report of Professor William B. Rubenstein, filed Dec. 11, 2017	JA8281
Dkt. 9527, Receipt of Expert's Report and Notice regarding: Rubenstein Report Responses, filed Dec. 11, 2017	JA8376

Dkt. 9536, Aldridge Objectors' Motion for Reconsideration regarding: Extension of Time for Rubenstein Report Responses Notice, filed Dec. 19, 2017	JA8378
Dkt. 9545, Response by the Locks Law Firm to Rubenstein Report, filed Jan. 2, 2018	JA8381
Dkt. 9547, Response by Goldberg, Persky and White, P.C.; Girardi Keese; and Russomanno & Borrello to Rubenstein Report, filed Jan. 3, 2018	JA8392
Dkt. 9548, Response by Anapol Weiss to Rubenstein Report, filed Jan. 3, 2018	JA8399
Dkt. 9549, Response by the Mokaram Law Firm; The Buckley Law Group; and The Stern Law Group to Rubenstein Report, filed Jan. 3, 2018	JA8402
Dkt. 9550, Response and Declaration of Robert A. Stein to Rubenstein Report, filed Jan. 3, 2018	JA8415
Dkt. 9551, Response by The Yerrid Law Firm and Neurocognitive Football Lawyers to Rubenstein Report, filed Jan. 3, 2018.....	JA8420
Dkt. 9552, Response by Co-Lead Class Counsel to Rubenstein Report, filed Jan. 3, 2018	JA8431
Dkt. 9552-1, Declaration of Christopher A. Seeger	JA8443
Dkt. 9553, Zimmerman Reed LLP's Joinder to the Response of the Locks Law Firm to the Rubenstein Report, filed Jan. 3, 2018	JA8455
Dkt. 9554, Response by the Aldridge Objectors to Rubenstein Report, filed Jan. 3, 2018	JA8457
Dkt. 9555, Notice of Joinder by Robins Cloud, LLP regarding: Responses to Rubenstein Report, filed Jan. 3, 2018.....	JA8469
Dkt. 9556, Response by Class Counsel Podhurst Orseck, P.A. to Rubenstein Report, filed Jan. 3, 2018	JA8471

- Dkt. 9561, Order regarding: Appointment of Dennis R. Suplee to Represent *pro se* Settlement Class Members Where There Has Been a Demonstrated Need for Legal Counsel, filed January 8, 2018. JA8476
- Dkt. 9571, Reply of Professor William B. Rubenstein to Reponses to Expert Report, filed Jan. 19, 2018 JA8477
- Dkt. 9576, Order Permitting Sur-Reply Filings in Response to Professor Rubenstein's Reply, filed Jan. 23, 2018 JA8493
- Dkt. 9577, Mitnick Law Office's First Motion To Compel, filed Jan 26, 2018 JA8494
- Dkt. 9581, Memorandum of Law regarding: Sur-Reply of NFL, Inc., and NFL Properties LLC to Rubenstein's Reply to Responses, filed Jan. 30, 2018 JA8498
- Dkt. 9587, Notice by Plaintiff(s) regarding: Sur-Reply of X1Law to Rubenstein's Reply to Responses, filed Jan. 30, 2018 JA8500
- Dkt. 9588, Notice by Plaintiff(s) regarding: Aldridge Objectors' Sur-Reply to Rubenstein's Reply to Responses, filed Jan. 30, 2018 JA8506
- Dkt. 9753-1, Exhibit A, Curriculum Vitae of Brian R. Ott, M.D. JA8513
- Dkt. 9753-2, Exhibit B, Curriculum Vitae of Mary Ellen Quiceno, M.D., F.A.A.N. JA8564
- Dkt. 9757, Order regarding: Joint Application by Co-Lead Class Counsel and Counsel for the NFL and NFL Properties, LLC for Appointment of Two Appeals Advisory Panel Members and Removal of One Appeals Advisory Panel Member, filed Mar. 6, 2018..... JA8577
- Dkt. 9760, Order Adopting Rules Governing Attorney's Liens, filed Mar. 6, 2018 JA8581
- Dkt. 9786, Class Counsel's Motion To Appoint the Locks Law Firm as Administrative Class Counsel, filed Mar. 20, 2018 JA8603
- Dkt. 9813, Pope McGlamry P.C.'s Motion for Joinder regarding: Administrative Class Counsel, filed Mar. 26, 2018..... JA8628

Dkt. 9816, Motion for Joinder by Locks Law Firm regarding: Hearing To Correct Fundamental Implementation Failures in Claims Processing, filed Mar. 26, 2018	JA8632
Dkt. 9819, Motion for Joinder by Provost Umphrey Law Firm, LLP regarding: Administrative Class Counsel, filed Mar. 27, 2018	JA8635
Dkt. 9820, Zimmerman Reed LLP's Joinder in Request for Action To Correct Implementation Failures in the Claims and BAP Administration, filed Mar. 27, 2018	JA8638
Dkt. 9821, Motion for Joinder by McCorvey Law, LLC regarding: Administrative Class Counsel, filed Mar. 27, 2018.....	JA8650
Dkt. 9824, Motion for Joinder by Lieff Cabraser Heinmann & Bernstein, LLP regarding: Hearing Request on Claims Settlement Process, filed Mar. 28, 2018	JA8654
Dkt. 9829, Motion for Joinder by Law Office of Hakimi & Shahriari regarding: Administrative Class Counsel, filed Mar. 28, 2018	JA8659
Dkt. 9830, Motion for Joinder by Casey Gerry regarding: Administrative Class Counsel, filed Mar. 28, 2018.....	JA8664
Dkt. 9831, Motion for Joinder by Podhurst Orseck regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8667
Dkt. 9833, Order regarding: Hearing as to Allocation, filed Mar. 28, 2018.....	JA8671
Dkt. 9834, Motion for Joinder by Mitnick Law Office regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8677
Dkt. 9835, Co-Lead Class Counsel's Letter regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8683
Dkt. 9836, Motion for Joinder by Wyatt Law regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8685
Dkt. 9837, Motion for Joinder by Robin Clouds LLP regarding: Administrative Class Counsel, filed Mar. 29, 2018.....	JA8688

Dkt. 9838, Notice by the Locks Law Firm In Response to Request for Deadline for Joinders and Date of Response Motion, filed Mar. 29, 2018.....	JA8690
Dkt. 9839, Motion for Joinder by Anapol Weiss regarding: Hearing Request on Claims Settlement Process, filed Mar. 29, 2018.....	JA8691
Dkt. 9840, Notice by the Locks Law Firm in Response to Request for Deadline for Joinders and Date of Response to Motion, filed Mar. 30, 2018.....	JA8694
Dkt. 9842, Motion for Joinder by Kreindler & Kreindler LLP regarding: Administrative Class Counsel, filed Mar. 30, 2018	JA8696
Dkt. 9843, Motion for Joinder by the Yerrid Law Firm and Neurocognitive Football Lawyers, filed Mar. 30, 2018	JA8700
Dkt. 9845, Order Directing Filing of Motions for Joinder, filed Apr. 2, 2018	JA8720
Dkt. 9847, Notice by Robins Cloud LLP of Withdrawal of Joinder regarding: Administrative Class Counsel, filed Apr. 2, 2018	JA8722
Dkt. 9848, Motion for Joinder by the Locks Law Firm to Anapol Weiss's Motion To Compel regarding: Reimbursement of Common Benefit Expenses and Establishment of Education Fund, filed Apr. 3, 2018	JA8724
Dkt. 9851, Notice by Lieff Cabraser Heinmann & Bernstein LLP of Withdrawal of Joinder regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8730
Dkt. 9852, Co-Lead Class Counsel's Response to Motion for Joinder Seeking Court Intervention, filed Apr. 3, 2018	JA8733
Dkt. 9853, Motion for Joinder by Hagen Rosskopf LLC regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8736
Dkt. 9854, Motion for Joinder by Smith Stallworth PA regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8741

Dkt. 9855, Motion for Joinder by Berkowitz and Hanna LLC regarding: Administrative Class Counsel and For a Hearing, filed Apr. 3, 2018	JA8743
Dkt. 9856, Motion for Joinder by Aldridge Objectors' regarding: Administrative Class Counsel, filed Apr. 3, 2018	JA8750
Dkt. 9856-1, Memorandum in Support of Movants' Joinder in the Motion of Class Counsel, the Locks Law Firm, for Appointment of Administrative Class Counsel.....	JA8752
Dkt. 9856-2, Exhibit A, Email correspondence dated Sept. 20, 2018	JA8761
Dkt. 9856-3, Exhibit B, Email correspondence dated Oct. 19, 2017	JA8762
Dkt. 9856-4, Exhibit C, Email correspondence dated Feb. 19, 2018	JA8764
Dkt. 9860, Memorandum of Hon. Anita Brody Granting Co-lead Counsel's Petition for Award of Attorneys' Fees and Reimbursement of Expenses, filed Apr. 5, 2018.....	JA8766
Dkt. 9862, Memorandum Opinion regarding: Attorneys' Fees, filed Apr. 5, 2018	JA8786
Dkt. 9865, Co-Lead Class Counsel's Response to Motion regarding: Cost Reimbursement, filed Apr. 5, 2018	JA8796
Dkt. 9870, Claims Administrator's Response to Locks Law Firm's Motion for Partial Joinder, filed Apr. 9, 2018	JA8802
Dkt. 9874, Co-Lead Class Counsel's Notice regarding: Class Counsel's Attorneys' Fee Award, filed Apr. 11, 2018	JA8837
Dkt. 9881, Co-Lead Class Counsel's Response to Locks Law Firm's Motion for Partial Joinder, filed Apr. 13, 2018	JA8839
Dkt. 9885, Co-Lead Class Counsel's Response in Opposition regarding: Administrative Class Counsel, filed Apr. 13, 2018	JA8847
Dkt. 9890, Order Denying the Motion of Class Counsel Locks Law Firm for Appointment of Administrative Class Counsel, filed Apr. 18, 2018	JA8884

Dkt. 9920, Tarricone Declaration regarding: Mar. 28, 2018 Order, filed May 1, 2018	JA8886
Dkt. 9921, Locks Law Firm's Motion for Reconsideration of the Denial of the Locks Law Firm's Motion for Appointment of Administrative Class Counsel, filed May 1, 2018	JA8891
Dkt. 9926, Aldridge Objectors' Motion for New Trial, filed May 2, 2018	JA8906
Dkt. 9955, Order Directing Firms Seeking Attorneys' Fees To File Materials, filed May 3, 2018.....	JA8908
Dkt. 9970, Amended Order for Hearing, filed May 7, 2018	JA8910
Dkt. 9985, Order Denying the Motion for Entry of Case Management Order Governing Applications for Attorneys' Fees; Cost Reimbursements; and Further Fee Set-Aside, filed May 14, 2018	JA8912
Dkt. 9990, Declaration by Mitnick Law Office regarding: Independent Fee Petition, filed May 14, 2018.....	JA8913
Dkt. 9993, Co-Lead Class Counsel's Response in Opposition regarding: Motion for Reconsideration of Administrative Class Counsel, filed May 15, 2018.....	JA8916
Dkt. 9995, Faneca Objectors' Statement regarding: Improvements to Preliminarily-Approved Settlement, filed May 16, 2018	JA8921
Dkt. 9996, Co-Lead Class Counsel's Response in Opposition regarding: Motion for New Trial, filed May 16, 2018	JA8925
Dkt. 10000, Co-Lead Class Counsel's PowerPoint from May 15, 2018 Hearing, filed May 17, 2018	JA8939
Dkt. 10001, Anapol Weiss's Motion for Leave To File Supplemental Memorandum regarding: Allocation of Common Benefit Fees, filed May 17, 2018	JA8954
Dkt. 10004, Order regarding: Hearing Concerning Attorneys' Fees, filed May 21, 2018	JA8961

Dkt. 10007, Order Denying Anapol Weiss' Motion for Leave To File Supplemental Memorandum regarding: Allocation of Common Benefit Fees, filed May 21, 2018.....	JA8963
Dkt. 10016, Letter Brief by the Locks Law Firm, filed May 22, 2018	JA8964
Dkt. 10017, Co-Lead Class Counsel's Response regarding: Locks Law Firm's Letter Brief, filed May 23, 2018	JA8968
Dkt. 10019, Explanation and Order of Judge Brody re Allocation of Attorneys' Fees, filed May 24, 2018	JA8971
Dkt. 10022, Aldridge Objectors' Motion To Stay regarding: Attorneys' Fees Allocation, filed May 25, 2018	JA8998
Dkt. 10023, Order Finding as Moot Motion To Strike Class Counsel's Sur-Reply regarding: Fee Allocation, filed May 29, 2018	JA9000
Dkt. 10026, Co-Lead Class Counsel's Response regarding: Mitnick Law Office's Petition for Independent Award of Attorneys' Fees, filed May 29, 2018	JA9001
Dkt. 10031, Co-Lead Class Counsel's Response in Opposition regarding: Aldridge Objectors' Motion To Stay, filed May 31, 2018.....	JA9004
Dkt. 10039, Aldridge Objectors' Reply to Response to Motion regarding: Motion To Stay, filed June 1, 2018	JA9015
Dkt. 10073, The Locks Law Firm's Motion for Reconsideration of the Court's Explanation and Order, filed June 7, 2018	JA9025
Dkt. 10085, Order Denying as Moot the Aldridge Objectors' Motion To Reconsider Withdrawal of Fed. R. Evid. 706 Deposition, filed June 19, 2018	JA9034
Dkt. 10086, Order Denying as Moot the Motion Requesting the Court To Direct the Relevant Parties To Negotiate on the Allocations of the Common Benefit Fund, filed June 19, 2018.....	JA9035
Dkt. 10091, Co-Lead Class Counsel's Response in Opposition regarding: the Locks Law Firm's Motion for Reconsideration, filed June 19, 2018	JA9036

Dkt. 10096, Faneca Objectors' Notice of Filing Hearing Slides, filed June 22, 2018	JA9042
Dkt. 10105, Certified Copy of Order from the USCA, filed June 28, 2018	JA9048
Dkt. 10119, Order Denying Motion for Reconsideration of the Denial of Locks Law Firm's Motion for Appointment of Administrative Class Counsel, filed July 2, 2018	JA9049
Dkt. 10127, Order Denying Motion for Reconsideration of the Court's Explanation and Order ECF Nos. 10072 and 10073, filed July 10, 2018	JA9051
Dkt. 10128, First Verified Petition of Co-Lead Class Counsel Christopher A. Seeger for an Award of Post-Effective Date Common Benefit Attorneys' Fees and Costs, filed July 10, 2018	JA9052
Dkt. 10134, Transcript of May 15, 2018 Hearing, filed July 13, 2018	JA9073
Dkt. 10145, Status Report of Co-Lead Class Counsel, filed July 18, 2018	JA9198
Dkt. 10165, Aldridge Objectors' Objections regarding: Post-Effective Date Fees, filed July 24, 2018	JA9205
Dkt. 10165-1, Exhibit 1, Declaration of Christopher A. Seeger	JA9221
Dkt. 10165-2, Exhibit 2, Letter from Craig R. Mitnick to Judge Brody dated Apr. 16, 2018	JA9224
Dkt. 10165-3, Text of Proposed Order	JA9229
Dkt. 10188, Notice of Appeal of Locks Law Firm from the May 24, 2108 Explanation and Order ECF No. 10019, filed August 2, 2018	JA9230
Dkt. 10261, Zimmerman Reed LLP's Objection regarding: Post- Effective Date Fees, filed Sept. 18, 2018	JA9233
Dkt. 10278, Declaration of Christopher A. Seeger regarding: Post- Effective Date Fees, filed Sept. 27, 2018	JA9242

Dkt. 10283, Order Adopting Amended Rules Governing Attorneys' Liens, filed Oct. 3, 2018	JA9248
Dkt. 10294, Order Adopting Amended Rules Governing Petitions for Deviation from the Fee Cap, filed Oct. 10, 2018.....	JA9272
Dkt. 10368, Report and Recommendation of Magistrate Judge Strawbridge, filed January 7, 2109	JA9290
Dkt. 10374, Second Verified Petition of Co-Lead Class Counsel Seeger for Award of Post-Effective Date Common Benefit Attorneys Fees and Costs, filed January 10, 2109	JA9383
Dkt. 10624, Order regarding: Vacating appointments of all Class Counsel, Co-Lead Class Counsel, and Subclass Counsel and Reappointing Christopher A. Seeger as Class Counsel, filed May, 24, 2019	JA9402
Dkt. 10677, Report and Recommendation of Magistrate Strawbridge, filed June 20, 2109	JA9404
Dkt. 10756-1, David Buckley, PLLC, Mokaram Law Firm and Stern Law Group's Petition to Establish Attorney's Lien, filed July 18, 2019	JA9425
Dkt. 10767, Third Verified Petition of Class Counsel Seeger for Award of Post-Effective Date Common Benefit Attorneys Fees and Costs, filed July 25, 2109	JA9428

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

CIVIL ACTION NO: 14-29

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**MOTION OF PROPOSED CO-LEAD CLASS COUNSEL, CLASS COUNSEL,
AND SUBCLASS COUNSEL FOR AN ORDER: (1) GRANTING PRELIMINARY
APPROVAL OF THE CLASS ACTION SETTLEMENT AGREEMENT; (2)
CONDITIONALLY CERTIFYING A SETTLEMENT CLASS AND SUBCLASSES;
(3) APPOINTING CO-LEAD CLASS COUNSEL, CLASS COUNSEL, AND SUBCLASS
COUNSEL; (4) APPROVING THE DISSEMINATION OF CLASS NOTICE;
(5) SCHEDULING A FAIRNESS HEARING; AND (6) STAYING CLAIMS AS TO
THE NFL PARTIES AND ENJOINING PROPOSED SETTLEMENT
CLASS MEMBERS FROM PURSUING RELATED LAWSUITS**

Plaintiffs' Proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel move, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e), for the entry of the Proposed Preliminary Approval and Class Certification Order, attached as Exhibit A. The proposed order seeks: (1) preliminary approval of the Class Action Settlement Agreement;

(2) conditional certification of the Settlement Class and Subclasses; (3) appointment of Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (4) approval of the dissemination of Class Notice; (5) scheduling of a Fairness Hearing; and (6) the stay of claims as to the NFL Parties and enjoinder of proposed Settlement Class Members from pursuing Related Lawsuits.

1. The terms of the Settlement are set forth in the Settlement Agreement, dated January 6, 2014, attached as Exhibit B.
2. The relief sought in this Motion is supported by:
 - a. Declaration of Katherine Kinsella, attached as Exhibit C (which includes as exhibits thereto, the proposed Long-Form Notice to Retired NFL Football Players and their Representative Claimants and Derivative Claimants, and the Summary Notice);
 - b. Declaration of Mediator and Former United States District Court Judge Layn R. Phillips in Support of Preliminary Approval of Settlement, attached as Exhibit D.
 - c. Memorandum of Law In Support of Motion of Proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel for an Order: (1) Granting Preliminary Approval of the Class Action Settlement Agreement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Claims as to the NFL Parties and Enjoining Proposed Settlement Class Members from Pursuing Related Lawsuits, filed contemporaneously herewith.

WHEREFORE, Proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel request that the Court enter the proposed Preliminary Approval and Class Certification Order.

Dated: January 6, 2014

Respectfully Submitted:

/s/ Christopher A. Seeger
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Exhibit A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

CIVIL ACTION NO: 14-29

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

[PROPOSED] ORDER

- (1) GRANTING PRELIMINARY APPROVAL OF
THE PROPOSED CLASS ACTION SETTLEMENT AGREEMENT;
(2) CONDITIONALLY CERTIFYING A SETTLEMENT CLASS AND
SUBCLASSES;
(3) APPOINTING CO-LEAD CLASS COUNSEL, CLASS COUNSEL,
AND SUBCLASS COUNSEL;
(4) APPROVING THE DISSEMINATION OF CLASS NOTICE;
(5) SCHEDULING A FAIRNESS HEARING; AND
(6) STAYING CLAIMS AS TO THE NFL PARTIES AND
ENJOINING PROPOSED SETTLEMENT CLASS MEMBERS
FROM PURSUING RELATED LAWSUITS

AND NOW, this ____ day of _____, 2014, upon consideration of the Motion of Proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel, for an Order: (1) Granting Preliminary Approval of the Class Action Settlement; (2) Conditionally Certifying a Settlement Class and Subclasses; (3) Appointing Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (4) Approving the Dissemination of Class Notice; (5) Scheduling a Fairness Hearing; and (6) Staying Claims as to the NFL Parties and Enjoining Proposed Settlement Class Members from Pursuing Related Lawsuits (the “Motion for Preliminary Approval and Conditional Class Certification”), pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e), it is hereby **ORDERED** that:

1. Capitalized terms used in this Order (the “Preliminary Approval and Conditional Class Certification Order”) have the same meaning as those defined in the Settlement Agreement dated January 6, 2014, between the National Football League and NFL Properties LLC (collectively, the “NFL Parties”) and Class and Subclass Representative Plaintiffs, attached as Exhibit B to the Motion for Preliminary Approval and Class Certification (the “Settlement”).

2. The Settlement Agreement, including all exhibits attached thereto, is preliminarily approved by the Court as being fair, reasonable and adequate. The Court preliminarily finds that the Settlement Agreement was negotiated and entered into at arm’s length, in good faith, free of collusion, and without detriment to the proposed Settlement Class and Subclasses. The Settlement is also found to be within the range possible for judicial approval at a prospective Fairness Hearing.

3. The Court finds that the requirements of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(3) have been satisfied for purposes of preliminary approval of the Settlement.

4. The following nationwide Settlement Class is conditionally certified, for settlement purposes only, and shall consist of:

- a. All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club (“Retired NFL Football Players”);
- b. Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and
- c. Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player (“Derivative Claimants”).

5. The following Settlement Subclasses are conditionally certified for settlement purposes only:

- a. Subclass 1, which shall consist of: Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis¹ prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants; and,
- b. Subclass 2, which shall consist of: Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of Chronic Traumatic Encephalopathy.

6. The following Subclass representatives are preliminarily appointed for each of the Settlement Subclasses:

- a. Subclass 1: Shawn Wooden; and
- b. Subclass 2: Kevin Turner.

7. Christopher A. Seeger and Sol Weiss are appointed as Co-Lead Class Counsel, and Steven C. Marks and Gene Locks are appointed as Class Counsel.

¹ A "Qualifying Diagnosis" is defined in the Settlement Agreement as Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, ALS and/or Death with CTE, as set forth in Exhibit 1 (Injury Definitions) to the Settlement Agreement.

8. Arnold Levin is appointed as Subclass Counsel for Subclass 1 and Dianne M. Nast is appointed as Subclass Counsel for Subclass 2.

9. Plaintiffs' Executive Committee and Plaintiffs' Steering Committee are appointed as Of Counsel.

10. The Garretson Resolution Group, Inc. is preliminarily appointed to serve as the Baseline Assessment Program ("BAP") Administrator and Lien Resolution Administrator.

11. BrownGreer PLC ("BrownGreer") is preliminarily appointed to serve as the Claims Administrator.

12. Citibank, N.A. is preliminarily appointed as the Trustee.

13. Kinsella Media, LLC is appointed to serve as the Settlement Class Notice Agent.

14. The Long-Form Notice to Settlement Class Members and the Summary Notice, attached hereto as Exhibits 1 and 2, respectively, are approved and meet the requirements of Fed. R. Civ. P. 23(e) and Fed. R. Civ. P. 23(c)(2)(B) and of due process.

15. The protocol for dissemination of notice to Settlement Class and Subclass Members, as set forth in the Settlement Class Notice Plan (attached to the Declaration of Katherine Kinsella), is approved.

16. Within twenty-one (21) days of this Order, Co-Lead Class Counsel shall cause the Long-Form Notice to be sent via first-class mail, postage prepaid to: (i) all known Retired NFL Football Players, their Representative Claimants and Derivative Claimants and (ii) counsel for Retired NFL Football Players, their Representative Claimants and Derivative Claimants, if known. Where an attorney represents more than one Settlement Class Member, it shall be sufficient to provide that attorney with a single copy of the notice. Notice to a Settlement Class

Member's counsel of record shall constitute notice to the Settlement Class Member, even if the Settlement Class Member does not receive independent notice.

17. On or before _____, 2014, Co-Lead Class Counsel shall cause Publication Notice to be initiated by consumer publications in various Media as follows:

- a. Print Publications – Time, Jet, People, and Sports Illustrated;
- b. Broadcast Television – Network Television and Cable (which may include ABC, CBS, CNN, Headline News and The Weather Channel) and NFL Network;
- c. Broadcast Radio (which may include American Urban Radio Networks);
- d. Online Media – Internet Banner Ads (NFL.com, CNN.com, Facebook.com, Weather.com, Senior Living Executive, Microsoft Media Network, Specific Media and Yahoo!) and Keyword Search (Google, including Google, AOL, and Ask.com and Bing, including Bing/MSN and Yahoo!).

18. The NFL Parties shall pay the cost of Settlement Class Notice, up to \$4,000,000, as set forth in the Settlement Agreement.

19. The Settlement Class Notice shall be posted on the Court's website so as to commence the notice period.

20. The Opt Out procedure set forth in Section 14.2 of the Settlement Agreement is approved. Any Settlement Class Member wishing to Opt Out of the Settlement Class must notify BrownGreer (as the preliminarily approved Claims Administrator), in writing, of his or her intention to Opt Out of the Settlement Class, postmarked no later than _____, 2014, which is the last day of the Opt Out/objection period. To be effective, the Opt Out notice must set forth the Settlement Class Member's printed name, address, telephone number, and date of birth and enclose a copy of his or her driver's license or other government issued

identification, along with a sentence stating: "I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323" (or substantially similar clear and unambiguous language). The Opt Out notice must contain the dated Personal Signature of the individual Settlement Class Member. Attorneys for Settlement Class Members may submit a written request to Opt Out on behalf of a Settlement Class Member, but such request must contain the Personal Signature of the Settlement Class Member.

21. The procedure for objecting to the Settlement, as set forth in Section 14.3 of the Settlement Agreement, is approved. All objections shall be postmarked no later than _____, 2014, or they will be deemed waived. All objections must contain the Personal Signature of the individual Settlement Class Member.

22. No later than fifteen (15) days prior to the Fairness Hearing, BrownGreer (as the preliminarily appointed Claims Administrator) shall prepare and file with the Court, and serve on Counsel for the NFL Parties, Co-Lead Class Counsel, Class Counsel and Subclass Counsel, a list of all persons who have timely Opted Out of the Settlement Class or objected to the Settlement.

23. Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties shall file any response to the objections, or any papers in support of final approval of the Settlement, no less than five (5) days prior to the date set for the Fairness Hearing.

24. Any Settlement Class Member (or counsel individually representing him or her, if any) seeking to make an appearance at the Fairness Hearing must file with the Court no later than _____, 2014, a written notice of his or her intention to appear at the Fairness Hearing.

25. A formal Fairness Hearing shall take place on the ____ day of _____, 2014 at ____ o'clock in the a.m./p.m., in order to consider comments on and objections to the proposed Settlement and to consider whether: (a) to approve thereafter the Settlement as fair, reasonable and adequate, pursuant to Rule 23 of the Federal Rules of Civil Procedure, (b) to finally certify the Settlement Class and Subclasses, and (c) to enter the Final Order and Judgment, as provided in Article XX of the Settlement Agreement. However, the Fairness Hearing shall be subject to adjournment by the Court without further notice, other than that which may be posted by the Court, on the Court's website.

26. This matter and all Related Lawsuits in this Court are stayed as to the NFL Parties. All proposed Settlement Class Members are enjoined from filing, commencing, prosecuting, intervening in, participating in, continuing to prosecute and/or maintaining, as plaintiffs, claimants, or class members in, any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances at issue, in the Class Action Complaint and/or the Released Claims, unless and until they have been excluded from the Settlement Class by action of the Court, or until the Court denies approval of the Class Action Settlement (and such denial is affirmed by the Court of last resort), or until the Settlement Agreement is otherwise terminated, except that claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits will not be stayed or enjoined. There is no stay of any actions against Riddell.

27. The NFL Parties have the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members on matters unrelated to the Class Action Settlement in connection with the NFL Parties' normal business.

28. If the Settlement Agreement is terminated or is not consummated for any reason, the preliminary certification of the Settlement Class and Subclasses shall be void, and the Plaintiffs and NFL Parties shall be deemed to have reserved all of their rights to propose or oppose any and all class certification issues.

SO ORDERED this _____ day of _____, 2014.

Anita B. Brody
United States District Court Judge

Exhibit A-1

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

\$760 Million NFL Concussion Litigation Settlement

Retired NFL Football Players May Be Eligible for Money and Medical Benefits

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The National Football League (“NFL”) and NFL Properties LLC (collectively, “NFL Parties”) have agreed to a \$760 million Settlement of a class action lawsuit seeking medical monitoring and compensation for brain injuries allegedly caused by head impacts experienced in NFL football. The NFL Parties deny that they did anything wrong.
- The Settlement includes all retired players of the NFL, the American Football League (“AFL”) that merged with the NFL, the World League of American Football, NFL Europe League, and NFL Europa League, as well as immediate family members of retired players and legal representatives of incapacitated, incompetent or deceased retired players.
- The Settlement will provide eligible retired players with:
 - Baseline neuropsychological and neurological exams to determine if retired players are: a) currently suffering from any neurocognitive impairment, including impairment serious enough for compensation, and b) eligible for additional testing and/or treatment (\$75 million);
 - Monetary awards for diagnoses of ALS (Lou Gehrig’s disease), Parkinson’s Disease, Alzheimer’s Disease, early and moderate Dementia and certain cases of chronic traumatic encephalopathy (CTE) (a neuropathological finding) diagnosed after death (\$675 million); and
 - Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives (\$10 million).
- To get money, proof that injuries were caused by playing NFL football is not required.
- **Settlement Class Members must register to get benefits. Sign up at the website for notification of the registration date.**
- Your legal rights are affected even if you do nothing. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
STAY IN THE SETTLEMENT CLASS	You do not need to do anything to be included in the Settlement Class. However, once the Court approves the Settlement, you will be bound by the terms and releases contained in the Settlement. There will be later notice to explain when and how to register for Settlement benefits (<i>see Question 26</i>).
ASK TO BE EXCLUDED	You will get no benefits from the Settlement if you exclude yourself (“opt-out”) from the Settlement. Excluding yourself is the only option that allows you to participate in any other lawsuit against the NFL Parties about the claims in this case (<i>see Question 30</i>).
OBJECT	Write to the Court if you do not like the Settlement (<i>see Question 35</i>). Ask to speak in Court about the fairness of the Settlement at the final approval hearing (<i>see Question 39</i>).

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- The Court in charge of this case still has to decide whether to approve the Settlement.
- **This Notice is only a summary of the Settlement Agreement and your rights. You are encouraged to carefully review the complete Settlement Agreement at www.NFLConcussionSettlement.com.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

What This Notice Contains

CHAPTER 1: INTRODUCTION

BASIC INFORMATION..... Page 5

1. Why is this Notice being provided?
2. What is the litigation about?
3. What is a class action?
4. Why is there a Settlement?
5. What are the benefits of the Settlement?

WHO IS PART OF THE SETTLEMENT? Page 7

6. Who is included in the Settlement Class?
7. What players are not included in the Settlement Class?
8. What if I am not sure whether I am included in the Settlement Class?
9. What are the different levels of neurocognitive impairment?
10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?

CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM..... Page 9

11. What is the Baseline Assessment Program (“BAP”)?
12. Why should I get a BAP baseline examination?
13. How do I schedule a baseline assessment examination and where can I get it done?

MONETARY AWARDS..... Page 10

14. What diagnoses qualify for monetary awards?
15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?
16. How much money will I receive?
17. How does the age of the retired player at the time of first diagnosis affect his monetary award?
18. How does the number of seasons a retired player played affect his monetary award?
19. How do prior strokes or brain injuries of a retired player affect his monetary award?
20. How is a retired player’s monetary award affected if he does not participate in the BAP program?
21. Can I receive a monetary award even though the retired player is dead?
22. Will this Settlement affect my participation in NFL or NFLPA related benefits programs?
23. Will this Settlement prevent me from bringing workers’ compensation claims?

EDUCATION FUND..... Page 14

24. What type of education programs are supported by the Settlement?

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT..... Page 14

25. What am I giving up to stay in the Settlement Class?

HOW TO GET BENEFITS..... Page 15

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

26. How do I get Settlement benefits?
27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?
28. Can I re-apply for compensation if my claim is denied?
29. Can I appeal the determination of my monetary award claim?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....Page 15

30. How do I get out of the Settlement?
31. If I do not exclude myself, can I sue the NFL Parties for the same thing later?
32. If I exclude myself, can I still get benefits from this Settlement?

THE LAWYERS REPRESENTING YOU.....Page 16

33. Do I have a lawyer in the case?
34. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....Page 17

35. How do I tell the Court if I do not like the Settlement?
36. What is the difference between objecting to the Settlement and excluding myself?

THE COURT'S FAIRNESS HEARING.....Page 18

37. When and where will the Court decide whether to approve the Settlement?
38. Do I have to attend the hearing?
39. May I speak at the hearing?

GETTING MORE INFORMATION.....Page 19

40. How do I get more information?

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 1: INTRODUCTION

BASIC INFORMATION

1. Why is this Notice being provided?

The Court in charge of this case authorized this Notice because you have a right to know about the proposed Settlement of this lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This Notice summarizes the Settlement and explains your legal rights and options.

Judge Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania is overseeing this case. The case is known as *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323. The people who sued are called the "Plaintiffs." The National Football League and NFL Properties LLC are called the "NFL Defendants."

The Settlement may affect your rights if you are: (a) a retired player of the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League, (b) an authorized representative of a deceased or legally incapacitated or incompetent retired player of those leagues, or (c) an individual with a close legal relationship with a retired player of those leagues, such as a spouse, parent or child.

2. What is the litigation about?

The Plaintiffs claim that retired players experienced head trauma during their NFL football playing careers that resulted in brain injuries, which have caused or may cause them long-term neurological problems. The Plaintiffs accuse the NFL Parties of being aware of the evidence and the risks associated with repetitive traumatic brain injuries but failing to warn and protect the players against the long-term risks, and ignoring and concealing this information from the players. The NFL Parties deny the claims in the litigation.

3. What is a class action?

In a class action, one or more people, the named plaintiffs (who are also called proposed "class representatives") sue on behalf of themselves and other people with similar claims. All of these people together are the proposed "class" or "class members." When a class action is settled, one court resolves the issues for all class members (in the settlement context, "settlement class members"), except for those who exclude themselves from the settlement. In this case, the proposed class representatives are Kevin Turner and Shawn Wooden. Excluding yourself means that you will not receive any benefits from the Settlement. The process for excluding yourself is described in Question 30 of this Notice.

4. Why is there a Settlement?

After extensive settlement negotiations mediated by retired United States District Court Judge Layn Phillips, the Plaintiffs and the NFL Parties agreed to the Settlement.

A settlement is an agreement between a plaintiff and a defendant to resolve a lawsuit. Settlements conclude litigation without the court or a jury ruling in favor of the plaintiff or the defendant. A settlement allows the parties to avoid the cost and risk of a trial, as well as the delays of litigation.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

If the Court approves this Settlement, the claims of all persons affected (*see Question 6*) and the litigation between these persons and the NFL Parties are over. The persons affected by the Settlement are eligible for the benefits summarized in this Notice and the NFL Parties will no longer be legally responsible to defend against the claims made in this litigation.

The Court has not and will not decide in favor of the retired players or the other persons affected by the Settlement or the NFL Parties, and by reviewing this Settlement the Court is not making and will not make any findings that any law was broken or that the NFL Parties did anything wrong.

The proposed Class Representatives and their lawyers (“Co-Lead Class Counsel,” “Class Counsel,” and “Subclass Counsel,” *see Question 33*) believe that the proposed Settlement is best for everyone who is affected. The factors that Co-Lead Class Counsel, Class Counsel, and Subclass Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal issues that are yet to be determined by the Court. Co-Lead Class Counsel, Class Counsel and Subclass Counsel balanced these and other substantial risks in determining that the Settlement is fair, reasonable and adequate in light of all circumstances and in the best interests of the Settlement Class Members.

The Settlement Agreement is available at www.NFLConcussionSettlement.com.

5. What are the benefits of the Settlement?

Under the Settlement, the NFL Parties will pay \$760 million to fund:

- Baseline neuropsychological and neurological examinations for eligible retired players, and additional medical testing, counseling and/or treatment if they are diagnosed with moderate cognitive impairment during the baseline examinations (up to \$75 million, “Baseline Assessment Program”) (*see Questions 11-13*);
- Monetary awards for diagnoses of ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) and Death with CTE prior to [Date of Preliminary Approval Order] (\$675 million, “Monetary Award Fund”) (*see Questions 14-21*); and
- Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives. (\$10 million) (*see Question 24*).

In addition, the NFL Parties will pay the cost of notice (up to \$4 million) and half of the compensation for a Special Master to assist the Court in overseeing aspects of the Settlement, for the first 5 years of the Settlement. The Court may extend the term for the Special Master. Other administrative costs and expenses will be paid out of the Monetary Award Fund, except for Baseline Assessment Program costs and expenses, which will be paid out of the Baseline Assessment Program Fund.

In the event the Monetary Award Fund is insufficient to pay all approved monetary claims, the NFL Parties have agreed to contribute up to an additional \$37.5 million, subject to Court approval. Based on extensive consultation with economic and medical experts, Co-Lead Class Counsel, Class Counsel, and Subclass Counsel believe the funding will be sufficient to pay all eligible monetary claims.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

The details of the Settlement benefits are in the Settlement Agreement, which is available at www.NFLConcussionSettlement.com.

Note: The Baseline Assessment Program and Monetary Award Fund are completely independent of the NFL Parties and any benefit programs that have been created between the NFL and the NFL Players Association. The NFL Parties are not involved in determining the validity of claims.

WHO IS PART OF THE SETTLEMENT?

You need to decide whether you are included in the Settlement.

6. Who is included in the Settlement Class?

This Settlement Class includes three types of people:

Retired NFL Football Players: Prior to [Date of Preliminary Approval Order], you (1) have retired, formally or informally, from playing professional football with the NFL or any Member Club, including AFL, World League of American Football, NFL Europe League, and NFL Europa League players, or (2) were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and no longer are under contract to a Member Club and are not seeking active employment as a player with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

Representative Claimants: An authorized representative, ordered by a court or other official of competent jurisdiction under applicable state law, of a deceased or legally incapacitated or incompetent Retired NFL Football Player.

Derivative Claimants: A spouse, parent, dependent child, or any other person who properly under applicable state law asserts the right to sue independently or derivatively by reason of his or her relationship with a living or deceased Retired NFL Football Player. (For example, a spouse asserting the right to sue due to the injury of a husband who is a Retired NFL Football Player.)

The Settlement recognizes two separate groups (“Subclasses”) of Settlement Class Members based on the Retired NFL Football Player’s injury status as of [Date of Preliminary Approval Order]:

- **Subclass 1** includes Retired NFL Football Players who were not diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) or Death with CTE prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants.
- **Subclass 2** includes:
 - (a) Retired NFL Football Players who were diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants; and

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- (b) Representative Claimants of deceased Retired NFL Football Players who were diagnosed with ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to death or who died prior to [Date of Preliminary Approval Order] and received a diagnosis of Death with CTE.

7. What players are not included in the Settlement Class?

The Settlement Class does not include: (a) current NFL players, and (b) people who tried out for NFL or AFL Member Clubs, or World League of American Football, NFL Europe League or NFL Europa League teams, but did not make it onto preseason, regular season or postseason rosters, or practice squads, developmental squads or taxi squads.

8. What if I am not sure whether I am included in the Settlement Class?

If you are not sure whether you are included in the Settlement Class, you may call 1-800-000-0000 with questions or visit www.NFLConcussionSettlement.com. You may also write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000. You may also consult with your own attorney.

9. What are the different levels of neurocognitive impairment?

Various levels of neurocognitive impairment are used in this Notice. More details can be found in the Injury Definitions, which are available at www.NFLConcussionSettlement.com or by calling 1-800-000-0000.

- Level 1 Neurocognitive Impairment covers ***moderate cognitive impairment***. It will be established in part with evidence of decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- Level 1.5 Neurocognitive Impairment covers ***early Dementia***. It will be established in part with evidence of moderate to severe cognitive decline, which includes a decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- Level 2 Neurocognitive Impairment covers ***moderate Dementia***. It will be established in part with evidence of severe decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.

If neurocognitive impairment is temporary and only occurs with delirium, or as a result of substance abuse or medicinal side effects, it is not covered by the Settlement.

10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?

No. A retired player can be a Settlement Class Member regardless of whether he is vested due to credited seasons or total and permanent disability under the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM

11. What is the Baseline Assessment Program ("BAP")?

All living retired players who have earned at least one-half of an Eligible Season (*see Question 18*), who do not exclude themselves from the Settlement (*see Question 30*), and who timely register to participate in the Settlement (*see Question 26*) may participate in the Baseline Assessment Program ("BAP").

The BAP will provide baseline neuropsychological and neurological assessment examinations to determine whether retired players are currently suffering from cognitive impairment. Retired players will have from two to ten years, depending on their age as of the date the Settlement is finally approved and any appeals are fully resolved, to have a baseline examination conducted through a nationwide network of qualified and independent medical providers.

- Retired players 43 or older as of the date the Settlement goes into effect will need to have a baseline examination within two years of the start of the program.
- Retired players under the age of 43 as of the date the Settlement goes into effect will need to have a baseline examination within 10 years, or before they turn 45, whichever comes sooner.

Retired players who are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment) are eligible to receive further medical testing and/or treatment (including counseling and pharmaceuticals) for that condition for the ten-year term of the BAP or five years from diagnosis, whichever is longer.

Settlement Class Members who participate in the BAP will be encouraged to provide their confidential medical records for use in research into cognitive impairment and safety and injury prevention with respect to football players.

Although all retired players are encouraged to take advantage of the BAP and receive a baseline examination, you do not need to participate in the BAP to receive a monetary award, but your award may be reduced by 10% if you do not participate in the BAP, as explained in more detail in Question 20.

12. Why should I get a BAP baseline examination?

Getting a BAP baseline examination will be beneficial to you and your family. It will determine whether you have any cognitive impairment, and if you are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment), you are eligible to receive further medical testing and/or treatment for that condition. In addition, whether or not you have any cognitive impairment today, the results of the BAP baseline examination can be used as a comparison to measure any subsequent deterioration of your cognitive condition over the course of your life. Participants also will be examined by at least two experts during the BAP baseline examinations, a neuropsychologist and a neurologist, and the retired player and/or

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his family members will have the opportunity to ask questions relating to any cognitive impairment during those examinations.

Participation in the BAP does not prevent you from filing a claim for a monetary award. For the next 65 years, retired players will be eligible for compensation paid from the Monetary Award Fund if they develop a Qualifying Diagnosis (*see Question 14*). Participation in the BAP also will help ensure that, to the extent you receive a Qualifying Diagnosis in the future, you receive the maximum monetary award to which you are entitled (*see Question 20*).

[13. How do I schedule a baseline assessment examination and where can I get it done?]

You need to register for Settlement benefits before you can get a baseline assessment examination. Registration will not be available until after the Court grants final approval to the Settlement and any appeals are fully resolved. **You can sign-up at www.NFLConcussionSettlement.com or by calling 1-800-000-0000 to receive additional notice about registration when it becomes available.**

The BAP Administrator will send notice to those retired players determined during registration to be eligible for the BAP, explaining how to arrange for an initial baseline assessment examination. The BAP will use a nationwide network of qualified and independent medical providers who will provide both the initial baseline assessment as well as any further testing and/or treatment. The BAP Administrator, which will be appointed by the Court, will establish the network of medical providers.

MONETARY AWARDS

[14. What diagnoses qualify for monetary awards?]

Monetary awards are available for the diagnosis of ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia), or Death with CTE (the "Qualifying Diagnoses"). A Qualifying Diagnosis can occur at any time until the end of the 65-year term of the Monetary Award Fund.

If a retired player receives a monetary award based on a Qualifying Diagnosis, and later is diagnosed with a different Qualifying Diagnosis that entitles him to a larger monetary award than his previous award, he will be eligible for an increase in compensation.

[15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?]

No. You do not need to prove that a Qualifying Diagnosis was caused by playing professional football or that you experienced head injuries in the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League in order to receive a monetary award. The fact that a retired player receives a Qualifying Diagnosis is sufficient to be eligible for a monetary award.

You also do not need to exclude the possibility that the Qualifying Diagnosis was caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.

[16. How much money will I receive?]

The amount of money you will receive depends on the retired player's:

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- Specific Qualifying Diagnosis,
- Age at the time he was diagnosed (*see Question 17*),
- Number of seasons played or practiced in the NFL or the AFL (*see Question 18*),
- Diagnosis of a prior stroke or traumatic brain injury (*see Question 19*),
- Participation in a baseline assessment exam (*see Question 20*), and
- Whether there are any legally enforceable liens on your award.

The table below lists the maximum amount of money available for each Qualifying Diagnosis before any adjustments are made.

QUALIFYING DIAGNOSIS	MAXIMUM AWARD AVAILABLE
Amyotrophic lateral sclerosis (ALS)	\$5 million
Death with CTE (diagnosed after death)	\$4 million
Parkinson's Disease	\$3.5 million
Alzheimer's Disease	\$3.5 million
Level 2 Neurocognitive Impairment (<i>i.e.</i> , moderate Dementia)	\$3 million
Level 1.5 Neurocognitive Impairment (<i>i.e.</i> , early Dementia)	\$1.5 million

Monetary awards may be increased up to 2.5% per year during the 65-year Monetary Award Fund term for inflation.

To receive the maximum amount outlined in the table, a retired player must have played for at least five Eligible Seasons (*see Question 18*) and have been diagnosed when younger than 45 years old.

Derivative Claimants are eligible to be compensated from the monetary award of the retired player with whom they have a close relationship in an amount of 1% of that award. If there are multiple Derivative Claimants for the same retired player, the 1% award will be divided among the Derivative Claimants according to the law where the retired player (or his Representative Claimant, if any) resides.

17. How does the age of the retired player at the time of first diagnosis affect his monetary award?

Awards are reduced for retired players who were 45 or older when diagnosed. The younger a retired player is at the time of diagnosis, the greater the award he will receive. Setting aside the other downward adjustments to monetary awards, the table below provides:

- The average award for people diagnosed between the ages of 45-49; and
- The amount of the award for those under age 45 and over 79.

The actual amount will be determined based on each retired player's actual age at the time of diagnosis and on other potential adjustments.

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AGE AT DIAGNOSIS	ALS	DEATH W/CTE	PARKINSON'S	ALZHEIMER'S	LEVEL 2	LEVEL 1.5
Under 45	\$5,000,000	\$4,000,000	\$3,500,000	\$3,500,000	\$3,000,000	\$1,500,000
45 - 49	\$4,500,000	\$3,200,000	\$2,470,000	\$2,300,000	\$1,900,000	\$950,000
50 - 54	\$4,000,000	\$2,300,000	\$1,900,000	\$1,600,000	\$1,200,000	\$600,000
55 - 59	\$3,500,000	\$1,400,000	\$1,300,000	\$1,150,000	\$950,000	\$475,000
60 - 64	\$3,000,000	\$1,200,000	\$1,000,000	\$950,000	\$580,000	\$290,000
65 - 69	\$2,500,000	\$980,000	\$760,000	\$620,000	\$380,000	\$190,000
70 - 74	\$1,750,000	\$600,000	\$475,000	\$380,000	\$210,000	\$105,000
75 - 79	\$1,000,000	\$160,000	\$145,000	\$130,000	\$80,000	\$40,000
80+	\$300,000	\$50,000	\$50,000	\$50,000	\$50,000	\$25,000

Note: The age of the retired player at diagnosis (not the age when applying for a monetary award) is used to determine the monetary amount awarded.

18. How does the number of seasons a retired player played affect his monetary award?

Awards are reduced for retired players who played less than five “Eligible Seasons.” The Settlement uses the term “Eligible Season” to count the seasons in which a retired player played or practiced in the NFL or AFL. A retired player earns an Eligible Season for:

- Each season where he was on an NFL or AFL Member Club’s “Active List” for either three or more regular season or postseason games, or
- Where he was on an Active List for one or more regular or postseason games and then spent two regular or postseason games on an injured reserve list or inactive list due to a concussion or head injury.
- A retired player also earns one-half of an Eligible Season for each season where he was on an NFL or AFL Member Club’s practice, developmental, or taxi squad for at least eight games, but did not otherwise earn an Eligible Season.

The “Active List” means the list of all players physically present, eligible and under contract to play for an NFL or AFL Member Club on a particular game day within any applicable roster or squad limits in the applicable NFL or AFL Constitution and Bylaws.

Time spent playing or practicing in the World League of American Football, NFL Europe League, and NFL Europa League does not count towards an Eligible Season.

The table below lists the reductions to a retired player’s (or his Representative Claimant’s) monetary award if the retired player has less than five Eligible Seasons. To determine the total number of Eligible Seasons

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credited to a retired player, add together all of the earned Eligible Seasons and half Eligible Seasons. For example, if a retired player earned two Eligible Seasons and three half Eligible Seasons, he will be credited with 3.5 Eligible Seasons.

NUMBER OF ELIGIBLE SEASONS	PERCENTAGE OF REDUCTION
4.5	10%
4	20%
3.5	30%
3	40%
2.5	50%
2	60%
1.5	70%
1	80%
.5	90%
0	97.5%

19. How do prior strokes or traumatic brain injuries of a retired player affect his monetary award?

It depends. A retired player's monetary award (or his Representative Claimant monetary award) will be reduced by 75% if he experienced a medically diagnosed stroke that occurred:

- Before receiving a Qualifying Diagnosis, or
- A severe traumatic brain injury unrelated to NFL football that occurred during or after the time the retired player played NFL football but before he received a Qualifying Diagnosis.

The award will not be reduced if the retired player (or his Representative Claimant) can show by clear and convincing evidence that the stroke or traumatic brain injury is not related to the Qualifying Diagnosis.

20. How is a retired player's monetary award affected if he does not participate in the BAP program?

It depends on when the retired player receives his Qualifying Diagnosis and the nature of the diagnosis. There is a 10% reduction to the monetary award if the retired player does not participate in the BAP and:

- Did not receive a Qualifying Diagnosis prior to [Date of Preliminary Approval Order], and
- Receives a Qualifying Diagnosis (other than ALS) after his deadline to receive a BAP baseline assessment examination.

21. Can I receive a monetary award even though the retired player is dead?

Yes. Representative Claimants for deceased retired players with a Qualifying Diagnoses will be eligible to receive monetary awards. If the deceased retired player died before January 1, 2006, however, the Representative Claimant will only receive a monetary award if the Court determines that a wrongful death or survival claim is allowed under applicable state law.

Derivative Claimants also will be eligible for a total award of 1% of the monetary award that the Representative Claimant for the deceased retired player receives (*see Question 16*).

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22. Will this Settlement affect my participation in NFL or NFLPA-related benefits programs?

No. The Settlement benefits are completely independent of any benefits programs that have been created by or between the NFL and the NFL Players Association. This includes the 88 Plan (Article 58 of the 2011 Collective Bargaining Agreement) and the Neuro-Cognitive Disability Benefit (Article 65 of the 2011 Collective Bargaining Agreement).

Note: The Settlement ensures that a retired player who has signed, or will sign, a release as part of his Neuro-Cognitive Disability Benefit application, will not be denied Settlement benefits.

23. Will this Settlement prevent me from bringing workers' compensation claims?

Claims for workers' compensation will not be released by this Settlement.

EDUCATION FUND

24. What type of education programs are supported by the Settlement?

The Settlement will provide \$10 million in funding to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL's medical and disability programs and other educational programs and initiatives.

Retired players will be able to actively participate in such initiatives if they desire.

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT

25. What am I giving up by staying in the Settlement Class?

Unless you exclude yourself from the Settlement, you cannot sue the NFL Parties, the Member Clubs, or related individuals and entities, or be part of any other lawsuit against the NFL Parties about the issues in this case. This means you give up your right to continue to litigate any claims related to this Settlement, or file new claims, in any court or in any proceeding at any time. You also are promising not to sue the National Collegiate Athletic Association or other collegiate, amateur or youth football organizations and entities for your cognitive injuries if you receive a monetary award under this Settlement. **However, the Settlement does not release any claims for workers' compensation (see Question 23) or claims alleging entitlement to NFL medical and disability benefits available under the Collective Bargaining Agreement.**

Please note that certain Plaintiffs also sued the football helmet manufacturer Riddell and certain related entities (specifically, Riddell, Inc., Riddell Sports Group Inc., All American Sports Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG Holdings Corp.). **They are not parties to this Settlement and claims against them are not released by this Settlement.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Article XVIII of the Settlement Agreement contains the complete text and details of what Settlement Class Members give up unless they exclude themselves from the Settlement, so please read it carefully. The Settlement Agreement is available at www.NFLConcussionSettlement.com. If you have any questions you can talk to the law firms listed in Question 33 for free or you can talk to your own lawyer if you have questions about what this means.

HOW TO GET BENEFITS

26. How do I get Settlement benefits?

To get benefits, you will need to register. Registration will not begin until after the Settlement is approved by the Court (*see* Question 37) and any appeals are fully resolved. Once that occurs, further notice will be provided about how to register for benefits. In the meantime, please go to www.NFLConcussionSettlement.com or call 1-800-000-0000 to sign-up for notice of registration. Registration must be completed in the time permitted (180 days from the time notice of registration is provided) if you wish to receive any of the benefits provided through this Settlement.

27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?

Yes. Retired NFL Football Players and Representative Claimants must submit claims for monetary awards within two years after the date of the diagnosis for which they claim a monetary award, or the date the Settlement is granted final approval and any appeals are fully resolved, whichever is later. This deadline may be extended to within four years of the Qualifying Diagnosis or the date the Settlement is granted final approval and any appeals are fully resolved if the Retired NFL Football Player or Representative Claimant can show substantial hardship beyond the Qualifying Diagnosis. Derivative Claimants must submit claims no later than 30 days after the Retired NFL Football Player through whom the close relationship is the basis for the claim (or the Representative Claimant of that retired player) receives a notice that he is entitled to a monetary award.

All claims must be submitted by the end of the 65-year term of the Monetary Award Fund.

28. Can I re-apply for compensation if my claim is denied?

Yes. A Settlement Class Member who submits a claim for a monetary award that is denied can re-apply in the future should the Retired NFL Football Player's medical condition change.

29. Can I appeal the determination of my monetary award claim?

Yes. The Settlement establishes a process for a Settlement Class Member to appeal the denial of a monetary award claim or the amount of the monetary award.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive benefits from this Settlement, and you want to retain the right to sue the NFL Parties about the legal issues in this case, then you must take steps to remove yourself from the Settlement. You can do this by asking to be excluded – sometimes referred to as “opting out” of – the Settlement Class.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

30. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail a letter or other written document to the Claims Administrator. Your request must include:

- Your name, address, telephone number, and date of birth;
- A copy of your driver's license or other government issued identification;
- A statement that "I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323" (or substantially similar clear and unambiguous language); and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

You must mail your exclusion request, postmarked no later than **Month 00, 0000** [Date ordered by the Court], to [INSERT INFORMATION], City, ST 00000.

31. If I do not exclude myself, can I sue the NFL Parties for the same thing later?

No. Unless you exclude yourself, you give up the right to sue the NFL Parties for all of the claims that this Settlement resolves. If you want to maintain your own lawsuit relating to the claims released by the Settlement, then you must exclude yourself by **Month 00, 0000**.

32. If I exclude myself, can I still get benefits from this Settlement?

No. **If you exclude yourself from the settlement you will not get any Settlement benefits.** You will not be eligible to receive a monetary award or participate in the Baseline Assessment Program.

THE LAWYERS REPRESENTING YOU**33. Do I have a lawyer in the case?**

The Court has appointed a number of lawyers to represent all Settlement Class Members as "Co-Lead Class Counsel," "Class Counsel" and "Subclass Counsel" (see Question 6). They are:

Christopher A. Seeger SEEGER WEISS LLP 77 Water Street New York, NY 10005	Sol Weiss ANAPOL SCHWARTZ 1710 Spruce Street Philadelphia, PA 19103
<i>Co-Lead Class Counsel</i>	<i>Co-Lead Class Counsel</i>
Steven C. Marks PODHURST ORSECK P.A. City National Bank Building 25 W. Flagler Street, Suite 800	Gene Locks LOCKS LAW FIRM The Curtis Center, Suite 720 East 601 Walnut Street

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Miami, FL 33130-1780	Philadelphia, PA 19106
<i>Class Counsel</i>	<i>Class Counsel</i>
Arnold Levin LEVIN FISHBEIN SEDRAN & BERMAN 510 Walnut Street, Suite 500 Philadelphia, PA 19106	Dianne M. Nast NAST LAW LLC 1101 Market Street, Suite 2801 Philadelphia, Pennsylvania 19107
<i>Counsel for Subclass 1</i>	<i>Counsel for Subclass 2</i>

You will not be charged for contacting these lawyers. If you are already represented by an attorney, you may contact your attorney to discuss the proposed settlement. If you are not already represented by an attorney, and you want to be represented by your own lawyer, you may hire one at your own expense.

34. How will the lawyers be paid?

At a later date to be determined by the Court, Co-Lead Class Counsel, Class Counsel and Subclass Counsel will ask the Court for an award of attorneys' fees and reasonable costs. The NFL Parties have agreed not to oppose or object to the request for attorneys' fees and reasonable incurred costs if the request does not exceed \$112.5 million. These fees and incurred costs will be paid separately by the NFL Parties and not from the \$760 million settlement funds. Settlement Class Members will have an opportunity to comment on and/or object to this request at an appropriate time. Ultimately, the award of attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

35. How do I tell the Court if I do not like the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you or your attorney must submit your written objection to the Court. The objection must include the following:

- The name of the case and multi-district litigation, *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323;
- Your name, address, telephone number, and date of birth;
- The name of the Retired NFL Football Player through which you are a Representative Claimant or Derivative Claimant (if you are not a retired player);
- Written evidence establishing that you are a Settlement Class Member;
- A detailed statement of your objections, and the specific reasons for each such objection, including any facts or law you wish to bring to the Court's attention;

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- Any other supporting papers, materials or briefs that you want the Court to consider in support of your objection; and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

In addition, if you intend to appear at the final approval hearing (the “Fairness Hearing”), you must submit a written notice of your intent [INSERT REQUIREMENTS FROM PRELIMINARY APPROVAL ORDER] by [INSERT DATE.]

The requirements to object to the Settlement are described in detail in the Settlement Agreement in section 14.3.

You must file your objection with the Court no later than **Month 00, 0000 [date ordered by the Court]**:

COURT
Clerk of the Court/Judge Anita B. Brody United States District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797

36. What is the difference between objecting to the Settlement and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement or want it to say something different. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and you do not want to receive any Settlement benefits. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. The Court will determine if you are allowed to speak if you request to do so (see Question 39).

37. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing at XX:00 x.m. on **Month 00, 0000**, at the United States District Court for the Eastern District of Pennsylvania, located at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.NFLConcussionSettlement.com or call 1-800-000-0000. At this hearing, the Court will hear evidence about whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and may elect to listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

The Court will consider the request for attorneys' fees and reasonable costs by Co-Lead Class Counsel, Class Counsel and Subclass Counsel (*see* Question 34) after the Fairness Hearing, which will be set at a later date by the Court.

38. Do I have to attend the hearing?

No. Co-Lead Class Counsel, Class Counsel and Subclass Counsel will answer questions the Court may have. But you are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not necessary.

39. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. The Court will determine whether to grant you permission to speak. To make such a request, you must file a written notice stating that it is your intent to appear at the *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323 Fairness Hearing ("Notice of Intention to Appear"). Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Court no later than Month 00, 0000.

GETTING MORE INFORMATION

40. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.NFLConcussionSettlement.com. You also may write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000 or call 1-800-000-0000.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE NFL PARTIES FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Exhibit A-2

\$760 MILLION NFL Compensation Settlement

The NFL and NFL Properties have agreed to settle claims from retired players who sued, accusing them of failing to warn of and mitigate risks of brain damage.

Who is included in the Settlement?

The Settlement generally includes all retired players of the NFL, AFL, World League of American Football, NFL Europe League and NFL Europa League. The Settlement includes immediate family members of retired players, and incompetent or deceased players. The NFL and NFL Properties deny that they did anything wrong.

What does the Settlement provide?

The Settlement provides \$760 million in funds for three benefits:

- Baseline medical exams to determine if retired players suffer from neurocognitive impairment and are entitled to additional testing and/or treatment (\$75 million),
- Monetary awards for diagnoses of ALS (Lou Gehrig's disease), Alzheimer's Disease, Parkinson's Disease, Dementia and certain cases of chronic traumatic encephalopathy or CTE (a neuropathological finding) diagnosed after death (\$675 million), and
- Education programs and initiatives related to football safety (\$10 million).

Retired players do not have to prove that their injuries were caused by playing NFL football to get money from the Settlement.

How can I get benefits?

You will need to register for benefits. Please go to the website or call 1-800-000-0000 to learn more.

What are my rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the NFL yourself, you must exclude yourself from the Class by **Month 00, 2014**. If you stay in the Class, you may object to the Settlement by **Month 00, 2014**.

The Court will hold a hearing on **Month 00, 2014** to consider whether to approve the Settlement. You or your own lawyer may appear and request to speak at the hearing at your own expense. At a later date to be determined by the Court, the attorneys will ask the Court for approval of an award of attorneys' fees and reasonable costs. The NFL and NFL Properties have agreed not to oppose or object to the request for attorneys' fees and reasonable costs, if the request does not exceed \$112.5 million. This money would be paid by the NFL and NFL Properties and would be in addition to the \$760 million Settlement.

Please Share this Notice with Other Retired Players and Their Families

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE: PLAYERS' CONCUSSION INJURY LITIGATION	:	No. 2:12-md-02323-AB
		MDL No. 2323
Kevin Turner and Shawn Wooden, <i>on behalf of themselves and others similarly situated,</i>		CIVIL ACTION NO: <u>14-29</u>
	Plaintiffs,	
v.		
National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc.,		
	Defendants.	
THIS DOCUMENT RELATES TO: ALL ACTIONS		

CLASS ACTION SETTLEMENT AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>	
ARTICLE I	Definitions of Settlement Class and Subclasses	3
ARTICLE II	Definitions	4
ARTICLE III	Settlement Benefits for Class Members	15
ARTICLE IV	Information and Registration Process.....	16
ARTICLE V	Baseline Assessment Program.....	19
ARTICLE VI	Monetary Awards for Qualifying Diagnoses.....	29
ARTICLE VII	Derivative Claimant Awards	32
ARTICLE VIII	Submission and Review of Claim Packages and Derivative Claim Packages.....	33
ARTICLE IX	Notice of Claim Determinations, Payments, and Appeals	36
ARTICLE X	Class Action Settlement Administration	43
ARTICLE XI	Identification and Satisfaction of Liens.....	52
ARTICLE XII	Education Fund.....	57
ARTICLE XIII	Preliminary Approval and Class Certification.....	57
ARTICLE XIV	Notice, Opt Out, and Objections.....	59
ARTICLE XV	Communications to the Public.....	61
ARTICLE XVI	Termination.....	62
ARTICLE XVII	Treatment of Confidential Information	63
ARTICLE XVIII	Releases and Covenant Not to Sue	64
ARTICLE XIX	Bar Order	68
ARTICLE XX	Final Order and Judgment and Dismissal With Prejudice.....	69
ARTICLE XXI	Attorneys' Fees	70
ARTICLE XXII	Enforceability of Settlement Agreement and Dismissal of Claims	70

ARTICLE XXIII NFL Payment Obligations	71
ARTICLE XXIV Denial of Wrongdoing, No Admission of Liability	77
ARTICLE XXV Representations and Warranties	78
ARTICLE XXVI Cooperation.....	79
ARTICLE XXVII Continuing Jurisdiction.....	80
ARTICLE XXVIII Role of Co-Lead Class Counsel, Class Counsel and Subclass Counsel.....	80
ARTICLE XXIX Bargained-For Benefits.....	81
ARTICLE XXX Miscellaneous Provisions	81

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS'
CONCUSSION INJURY LITIGATION, MDL 2323,
CLASS ACTION SETTLEMENT AGREEMENT
(subject to Court approval)**

PREAMBLE

This SETTLEMENT AGREEMENT, dated as of January 6, 2014 (the "Settlement Date"), is made and entered into by and among defendants the National Football League ("NFL") and NFL Properties LLC ("NFL Properties") (collectively, "NFL Parties"), by and through their attorneys, and the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, by and through Co-Lead Class Counsel, Class Counsel and Subclass Counsel. This Settlement Agreement is intended by the Parties fully, finally, and forever to resolve, discharge, and settle all Released Claims against the Released Parties, as set forth below, subject to review and approval by the Court.¹

RECITALS

A. On January 31, 2012, a federal multidistrict litigation was established in the United States District Court for the Eastern District of Pennsylvania, In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323. Plaintiffs in MDL No. 2323 filed a Master Administrative Long-Form Complaint and a Master Administrative Class Action Complaint for Medical Monitoring on June 7, 2012. Plaintiffs filed an Amended Master Administrative Long-Form Complaint on July 17, 2012. Additional similar lawsuits are pending in various state and federal courts.

B. The lawsuits arise from the alleged effects of mild traumatic brain injury allegedly caused by the concussive and sub-concussive impacts experienced by former NFL Football players. Plaintiffs seek to hold the NFL Parties responsible for their alleged injuries under various theories of liability, including that the NFL Parties allegedly breached a duty to NFL Football players to warn and protect them from the long-term health problems associated with concussions and that the NFL Parties allegedly concealed and misrepresented the connection between concussions and long-term chronic brain injury.

C. On August 30, 2012, the NFL Parties filed motions to dismiss the Master Administrative Class Action Complaint for Medical Monitoring and the Amended Master Administrative Long-Form Complaint on preemption grounds. Plaintiffs filed their oppositions to the motions on October 31, 2012, the NFL Parties filed reply memoranda of law on December 17, 2012, and plaintiffs filed sur-reply memoranda of law on January 28, 2013. Oral argument on the NFL Parties' motions to dismiss on preemption grounds was held on April 9, 2013.

¹ Capitalized terms have the meanings provided in ARTICLE II, unless a section or subsection of this Settlement Agreement provides otherwise.

D. On July 8, 2013, prior to ruling on the motions to dismiss, the Court ordered the plaintiffs and NFL Parties to engage in mediation to determine if consensual resolution was possible and appointed retired United States District Court Judge Layn Phillips of Irell & Manella LLP as mediator.

E. Over the course of the following two months, the Parties, by and through their respective counsel, engaged in settlement negotiations under the direction of Judge Phillips. On August 29, 2013, the Parties signed a settlement term sheet setting forth the material terms of a settlement agreement. On the same day, the Court issued an order deferring a ruling on the NFL Parties' motions to dismiss and ordering the Parties to submit, as soon as possible, the full documentation relating to the settlement, along with a motion seeking preliminary approval of the settlement and notice plan.

F. In conjunction with the filing of this Settlement Agreement, the Class and Subclass Representatives filed Plaintiffs' Class Action Complaint ("Class Action Complaint") on January 6, 2014. In the Class Action Complaint, the Class and Subclass Representatives allege claims for equitable, injunctive and declaratory relief pursuant to Federal Rules of Civil Procedure 23(a)(1-4) & (b)(2), or, alternatively, for compensatory damages pursuant to Federal Rule of Civil Procedure 23(b)(3), for negligence, negligent hiring, negligent retention, negligent misrepresentation, fraud, fraudulent concealment, medical monitoring, wrongful death and survival, and loss of consortium, all under state law.

G. The NFL Parties deny the Class and Subclass Representatives' allegations, and the allegations in Related Lawsuits, and deny any liability to the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member for any claims, causes of action, costs, expenses, attorneys' fees, or damages of any kind, and would assert a number of substantial legal and factual defenses against plaintiffs' claims if they were litigated to conclusion.

H. The Class and Subclass Representatives, through their counsel, have engaged in substantial fact gathering to evaluate the merits of their claims and the NFL Parties' defenses. In addition, the Class and Subclass Representatives have analyzed the legal issues raised by their claims and the NFL Parties' defenses, including, without limitation, the NFL Parties' motions to dismiss the Amended Master Administrative Long-Form Complaint and Master Administrative Class Action Complaint on preemption grounds.

I. After careful consideration, the Class and Subclass Representatives, and their respective Counsel, have concluded that it is in the best interests of the Class and Subclass Representatives and the Settlement Class and Subclasses to compromise and settle all Released Claims against the Released Parties for consideration reflected in the terms and benefits of this Settlement Agreement. After arm's length negotiations with Counsel for the NFL Parties, including through the efforts of the court-appointed mediator, the Class and Subclass Representatives have considered, among other things: (1) the complexity, expense, and likely duration of the litigation; (2) the stage of the litigation and amount of fact gathering completed; (3) the potential for the

NFL Parties to prevail on threshold issues and on the merits; and (4) the range of possible recovery, and have determined that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class and Subclass Representatives and the Settlement Class and Subclasses.

J. The NFL Parties have concluded, in light of the costs, risks, and burden of litigation, that this Settlement Agreement in this complex putative class action litigation is appropriate. The NFL Parties and Counsel for the NFL Parties agree with the Class and Subclass Representatives and their respective counsel that this Settlement Agreement is a fair, reasonable, and adequate resolution of the Released Claims. The NFL Parties reached this conclusion after considering the factual and legal issues relating to the litigation, the substantial benefits of this Settlement Agreement, the expense that would be necessary to defend claims by Settlement Class Members through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of the NFL Parties to conduct their business unhampered by the costs, distraction and risks of continued litigation over Released Claims.

K. The Parties desire to settle, compromise, and resolve fully all Released Claims.

L. The Parties desire and intend to seek Court review and approval of the Settlement Agreement, and, upon preliminary approval by the Court, the Parties intend to seek a Final Order and Judgment from the Court dismissing with prejudice the Class Action Complaint and ordering the dismissal with prejudice of Related Lawsuits.

M. This Settlement Agreement will not be construed as evidence of, or as an admission by, the NFL Parties of any liability or wrongdoing whatsoever or as an admission by the Class or Subclass Representatives, or Settlement Class Members, of any lack of merit in their claims.

NOW, THEREFORE, it is agreed that the foregoing recitals are hereby expressly incorporated into this Settlement Agreement and made a part hereof and further, that in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, including the Releases and Covenant Not to Sue in ARTICLE XVIII, the entry by the Court of the Final Order and Judgment dismissing the Class Action Complaint with prejudice and approving the terms and conditions of the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this action shall be settled and compromised under the following terms and conditions:

ARTICLE I **Definitions of Settlement Class and Subclasses**

Section 1.1 Definition of Settlement Class

(a) "Settlement Class" means all Retired NFL Football Players, Representative Claimants and Derivative Claimants.

(b) Excluded from the Settlement Class are any Retired NFL Football Players, Representative Claimants or Derivative Claimants who timely and properly exercise the right to be excluded from the Settlement Class (“Opt Outs”).

Section 1.2 Definition of Subclasses

(a) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

(b) “Subclass 2” means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

ARTICLE II Definitions

Section 2.1 Definitions

For the purposes of this Settlement Agreement, the following terms (designated by initial capitalization throughout this Agreement) will have the meanings set forth in this Section.

Unless the context requires otherwise, (i) words expressed in the masculine will include the feminine and neuter gender and vice versa; (ii) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (iii) the word “or” will not be exclusive; (iv) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (v) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Fed. R. Civ. P. 6(a)(6)), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (vi) references to this Settlement Agreement will include all exhibits, schedules, and annexes hereto; (vii) references to any law will include all rules and regulations promulgated thereunder; (viii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; and (ix) references to dollars or “\$” are to United States dollars.

(a) “Active List” means the list of all players physically present, eligible and under contract to play for a Member Club on a particular game day within any applicable roster or squad limits set forth in the applicable NFL or American Football League Constitution and Bylaws.

(b) “Additional Contingent Contribution” means the conditional monetary payment by the NFL Parties, as set forth in Section 23.5.

(c) “Affiliate” means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting shares, by contract, or otherwise.

(d) “ALS” means amyotrophic lateral sclerosis, also known as Lou Gehrig’s Disease, as defined in Exhibit 1.

(e) “Alzheimer’s Disease” is defined in Exhibit 1.

(f) “American Football League” means the former professional football league that merged with the NFL.

(g) “Appeals Form” means that document that Settlement Class Members, the NFL Parties or Co-Lead Class Counsel, as the case may be, will submit when appealing Monetary Award or Derivative Claimant Award determinations by the Claims Administrator, as set forth in Section 9.7.

(h) “Appeals Advisory Panel” means a panel of physicians, composed of, in any combination, three neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, board-certified neurologists and/or board-certified neurosurgeons, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, any one of whom is eligible to advise the Court or the Special Master with respect to medical aspects of the Class Action Settlement.

(i) “Baseline Assessment Program” (“BAP”) means the program described in ARTICLE V.

(j) “Baseline Assessment Program Supplemental Benefits” or “BAP Supplemental Benefits” means medical treatment, including, as needed, counseling and pharmaceutical coverage, for Level 1 Neurocognitive Impairment (as set forth in Exhibit 1) within a network of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s), respectively, established by the BAP Administrator, as set forth in Section 5.11.

(k) “Baseline Assessment Program Fund Administrator” or “BAP Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the BAP Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE V.

(l) "Baseline Assessment Program Fund" or "BAP Fund" means the fund to pay BAP costs and expenses, as set forth in ARTICLE V.

(m) "Claim Form" means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant claiming a Monetary Award, as set forth in ARTICLE VIII.

(n) "Claim Package" means the Claim Form and other documentation, as set forth in Section 8.2(a).

(o) "Claims Administrator" means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Claims Administrator under this Settlement Agreement, including, without limitation, as set forth in Section 10.2.

(p) "Class Action Complaint" means the complaint captioned Plaintiffs' Class Action Complaint filed on consent in the Court on January 6, 2014.

(q) "Class Action Settlement" means that settlement set forth in this Settlement Agreement.

(r) "Class Counsel" means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Steven C. Marks of Podhurst Orseck, P.A. and Gene Locks of Locks Law Firm, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class.

(s) "Class Representatives" means Shawn Wooden and Kevin Turner, or such other or different persons as may be appointed by the Court as the representatives of the Settlement Class.

(t) "CMS" means the Centers for Medicare & Medicaid Services, the agency within the United States Department of Health and Human Services responsible for administration of the Medicare Program and the Medicaid Program.

(u) "Co-Lead Class Counsel" means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Christopher A. Seeger of Seeger Weiss LLP and Sol Weiss of Anapol Schwartz, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class in a lead role.

(v) "Collective Bargaining Agreement" means the August 4, 2011 Collective Bargaining Agreement between the NFL Management Council and the NFL Players Association, individually and together with all previous and future NFL Football collective bargaining agreements governing NFL Football players.

(w) "Counsel for the NFL Parties" means Paul, Weiss, Rifkind, Wharton & Garrison LLP, or any law firm or attorney so designated in writing by the NFL Parties.

(x) "Court" means the United States District Court for the Eastern District of Pennsylvania, Judge Anita Brody (or any successor judge designated by the United States District Court for the Eastern District of Pennsylvania), presiding in In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323.

(y) "Covenant Not to Sue" means the covenant not to sue set forth in Section 18.4.

(z) "CTE" means Chronic Traumatic Encephalopathy.

(aa) "Death with CTE" is defined in Exhibit 1.

(bb) "Deficiency" means any failure of a Settlement Class Member to provide required information or documentation to the Claims Administrator, as set forth in Section 8.5.

(cc) "Derivative Claim Form" means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Derivative Claimant claiming a Derivative Claimant Award, as set forth in ARTICLE VIII.

(dd) "Derivative Claim Package" means the Derivative Claim Form and other documentation, as set forth in Section 8.2(b).

(ee) "Derivative Claimants" means spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player.

(ff) "Derivative Claimant Award" means the payment of money from the Monetary Award of the subject Retired NFL Football Player to a Settlement Class Member who is a Derivative Claimant, as set forth in ARTICLE VII.

(gg) "Diagnosing Physician Certification" means that document which a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant must submit either as part of a Claim Package in order to receive a Monetary Award, as set forth in Section 8.2(a), or to receive BAP Supplemental Benefits, as set forth in Section 5.11, the contents of which shall be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties and that shall include, without limitation: (i) a certification under penalty of perjury by the diagnosing physician that the information provided is true and correct, (ii) the Qualifying Diagnosis being made consistent with the criteria in Exhibit 1 (Injury Definitions) and the date of diagnosis, and (iii) the qualifications of the diagnosing physician.

(hh) "Education Fund" means a fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

(ii) "Education Fund Amount" means the amount of Ten Million United States dollars (U.S. \$10,000,000), as set forth in Section 23.1(b).

(jj) "Effective Date" means (i) the day following the expiration of the deadline for appealing the entry by the Court of the Final Order and Judgment approving the Settlement Agreement and certifying the Settlement Class (or for appealing any ruling on a timely motion for reconsideration of such Final Order, whichever is later), if no such appeal is filed; or (ii) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

(kk) "Eligible Season" means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club's Active List on the date of three (3) or more regular season or postseason games; or (ii) on a Member Club's Active List on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on a Member Club's injured reserve list or inactive list due to a concussion or head injury. A "half of an Eligible Season" means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was on a Member Club's practice, developmental, or taxi squad roster for at least eight (8) regular or postseason games.

(ll) "Fairness Hearing" means the hearing scheduled by the Court to consider the fairness, reasonableness, and adequacy of this Settlement Agreement under Rule 23(e)(2) of the Federal Rules of Civil Procedure, and to determine whether a Final Order and Judgment should be entered.

(mm) "Final Approval Date" means the date on which the Court enters the Final Order and Judgment.

(nn) "Final Order and Judgment" means the final judgment and order entered by the Court, substantially in the form of Exhibit 4, and as set forth in ARTICLE XX.

(oo) "Funds" means the Settlement Trust Account, the BAP Fund, the Monetary Award Fund, along with the Education Fund.

(pp) "Governmental Payor" means any federal, state, or other governmental body, agency, department, plan, program, or entity that administers, funds, pays, contracts for, or provides medical items, services, and/or prescription drugs,

including, but not limited to, the Medicare Program, the Medicaid Program, Tricare, the Department of Veterans Affairs, and the Department of Indian Health Services.

(qq) "HIPAA" means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 42 U.S.C.) and the implementing regulations issued by the United States Department of Health and Human Services thereunder, and incorporates by reference the provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009)) pertaining to Protected Health Information.

(rr) This definition is intentionally left blank.

(ss) This definition is intentionally left blank.

(tt) This definition is intentionally left blank.

(uu) "Lien" means any statutory lien of a Government Payor or Medicare Part C or Part D Program sponsor; or any mortgage, lien, pledge, charge, security interest, or legal encumbrance, of any nature whatsoever, held by any person or entity, where there is a legal obligation to withhold payment of a Monetary Award, Supplemental Monetary Award, Derivative Claimant Award, or some portion thereof, to a Settlement Class Member under applicable federal or state law.

(vv) "Lien Resolution Administrator" means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Lien Resolution Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE XI.

(ww) "Medicaid Program" means the federal program administered by the states under which certain medical items, services, and/or prescription drugs are furnished to Medicaid beneficiaries under Title XIX of the Social Security Act, 42 U.S.C. § 1396–1, *et seq.*

(xx) "Medicare Part C or Part D Program" means the program(s) under which Medicare Advantage, Medicare cost, and Medicare health care prepayment plan benefits and Medicare Part D prescription drug plan benefits are administered by private entities that contract with CMS.

(yy) "Medicare Program" means the Medicare Parts A and B federal program administered by CMS under which certain medical items, services, and/or prescription drugs are furnished to Medicare beneficiaries under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, *et seq.*

(zz) "Member Club" means any past or present member club of the NFL or any past member club of the American Football League.

(aaa) "Monetary Award" means the payment of money from the Monetary Award Fund to a Settlement Class Member, other than a Derivative Claimant, as set forth in ARTICLE VI.

(bbb) "Monetary Award Fund" means the sixty-five (65) year fund, as set forth in Section 6.8.

(ccc) "Monetary Award Grid" means that document attached as Exhibit 3.

(ddd) "MSP Laws" means the Medicare Secondary Payer Act set forth at 42 U.S.C. § 1395y(b), as amended from time to time, and implementing regulations, and other applicable written CMS guidance.

(eee) "NFL CBA Medical and Disability Benefits" means any disability or medical benefits available under the Collective Bargaining Agreement, including the benefits available under the Bert Bell/Pete Rozelle NFL Player Retirement Plan; NFL Player Supplemental Disability Plan, including the Neuro-Cognitive Disability Benefit provided for under Article 65 of the Collective Bargaining Agreement; the 88 Plan; Gene Upshaw NFL Player Health Reimbursement Account Plan; Former Player Life Improvement Plan; NFL Player Insurance Plan; and/or the Long Term Care Insurance Plan.

(fff) "NFL Football" means the sport of professional football as played in the NFL, the American Football League, the World League of American Football, the NFL Europe League, and the NFL Europa League. NFL Football excludes football played by all other past, present or future professional football leagues, including, without limitation, the All-American Football Conference.

(ggg) "NFL Medical Committees" means the various past and present medical committees, subcommittees and panels that operated or operate at the request and/or direction of the NFL, whether independent or not, including, without limitation, the Injury and Safety Panel, Mild Traumatic Brain Injury Committee, Head Neck and Spine Medical Committee, Foot and Ankle Subcommittee, Cardiovascular Health Subcommittee, and Medical Grants Subcommittee, and all persons, whether employees, agents or independent of the NFL, who at any time were members of or participated on each such panel, committee, or subcommittee.

(hhh) "Notice of Challenge Determination" means the written notice set forth in Section 4.3(a)(ii)-(iii).

(iii) "Notice of Deficiency" means that document that the Claims Administrator sends to any Settlement Class Member whose Claim Package or Derivative Claim Package contains a Deficiency, as set forth in Section 8.5.

(jjj) "Notice of Derivative Claimant Award Determination" means the written notice set forth in Section 9.2.

(kkk) “Notice of Monetary Award Claim Determination” means the written notice set forth in Section 9.1.

(lll) “Notice of Registration Determination” means the written notice set forth in Section 4.3.

(mmm) “Offsets” means downward adjustments to Monetary Awards, as set forth in Section 6.5(b).

(nnn) “Opt Out,” when used as a verb, means the process by which any Retired NFL Football Player, Representative Claimant or Derivative Claimant otherwise included in the Settlement Class exercises the right to exclude himself or herself from the Settlement Class in accordance with Fed. R. Civ. P. 23(c)(2).

(ooo) “Opt Outs,” when used as a noun, means those Retired NFL Football Players, Representative Claimants and Derivative Claimants who would otherwise have been included in the Settlement Class and who have timely and properly exercised their rights to Opt Out and therefore, after the Effective Date, are not Settlement Class Members.

(ppp) “Other Party” means every person, entity, or party other than the Released Parties.

(qqq) “Parkinson’s Disease” is defined in Exhibit 1.

(rrr) “Parties” means the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, and the NFL Parties.

(sss) “Personal Signature” means the actual signature by the person whose signature is required on the document. Unless otherwise specified in this Settlement Agreement, a document requiring a Personal Signature may be submitted by an actual original “wet ink” signature on hard copy, or a PDF or other electronic image of an actual signature, but cannot be submitted by an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(ttt) “Preliminary Approval and Class Certification Order” means the order, upon entry by the Court, preliminarily approving the Class Action Settlement and conditionally certifying the Settlement Class and Subclasses.

(uuu) “Protected Health Information” means individually identifiable health information, as defined in 45 C.F.R. § 160.103.

(vvv) “Qualified BAP Providers” means neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, and board-

certified neurologists, eligible to conduct baseline assessments of Retired NFL Football Players under the BAP, as set forth in Section 5.7(a).

(www) "Qualified Pharmacy Vendor(s)" means one or more nationwide mail order pharmacies contracted to provide approved pharmaceutical prescriptions as part of the BAP Supplemental Benefits, as set forth in Section 5.7(b).

(xxx) "Qualifying Diagnosis" or "Qualifying Diagnoses" means Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, ALS, and/or Death with CTE, as set forth in Exhibit 1 (Injury Definitions).

(yyy) "Related Lawsuits" means all past, present and future actions brought by one or more Releasors against one or more Released Parties pending in the Court, other than the Class Action Complaint, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum that arise out of, are based upon or are related to the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, alleged, or referred to in the Class Action Complaint, except that Settlement Class Members' claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits are not Related Lawsuits.

(zzz) "Released Claims" means those claims released as set forth in Section 18.1 and Section 18.2.

(aaaa) "Released Parties" for purposes of the Released Claims means (i) the NFL Parties (including all persons, entities, subsidiaries, divisions, and business units composed thereby), together with (ii) each of the Member Clubs, (iii) each of the NFL Parties' and Member Clubs' respective past, present, and future agents, directors, officers, employees, independent contractors, general or limited partners, members, joint venturers, shareholders, attorneys, trustees, insurers (solely in their capacities as liability insurers of those persons or entities referred to in subparagraphs (i) and (ii) above and/or arising out of their relationship as liability insurers to such persons or entities), predecessors, successors, indemnitees, and assigns, and their past, present, and future spouses, heirs, beneficiaries, estates, executors, administrators, and personal representatives, including, without limitation, all past and present physicians who have been employed or retained by any Member Club and members of all past and present NFL Medical Committees; and (iv) any natural, legal, or juridical person or entity acting on behalf of or having liability in respect of the NFL Parties or the Member Clubs, in their respective capacities as such; and, as to (i)-(ii) above, each of their respective Affiliates, including their Affiliates' officers, directors, shareholders, employees, and agents. For the avoidance of any doubt, Riddell is not a Released Party.

(bbbb) "Releases" means the releases set forth in ARTICLE XVIII.

(cccc) "Releasors" means the releasors set forth in Section 18.1.

(dddd) "Representative Claimants" means authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players.

(eeee) "Retired NFL Football Players" means all living NFL Football players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

(ffff) "Riddell" means Riddell, Inc.; All American Sports Corporation; Riddell Sports Group, Inc.; Easton-Bell Sports, Inc.; Easton-Bell Sports, LLC; EB Sports Corp.; and RBG Holdings Corp., and each of their respective past, present, and future Affiliates, directors, officers, employees, general or limited partners, members, joint venturers, shareholders, agents, trustees, insurers (solely in their capacities as such), reinsurers (solely in their capacities as such), predecessors, successors, indemnitees, and assigns.

(gggg) "Special Master" means that person appointed by the Court pursuant to Federal Rule of Civil Procedure 53 to oversee the administration of the Settlement Agreement, as set forth in Section 10.1.

(hhhh) "Settlement Agreement" means this Settlement Agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

(iiii) "Settlement Amount" means the amount of Seven Hundred and Fifty Million United States dollars (U.S. \$750,000,000), as set forth in Section 23.1(a).

(jjjj) "Settlement Class and Subclasses" is defined in Section 1.1 and Section 1.2.

(kkkk) "Settlement Class Member" means each Retired NFL Football Player, Representative Claimant and/or Derivative Claimant in the Settlement Class; provided, however, that the term Settlement Class Member as used herein with respect to any right or obligation after the Effective Date does not include any Opt Outs.

(llll) "Settlement Class Notice" means that notice, in the form of Exhibit 5, and as set forth in Section 14.1, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

(mmmm) "Settlement Class Notice Agent" means that person or entity who will implement the Settlement Class Notice Plan and who will be responsible for the publication and provision of the Settlement Class Notice.

(nnnn) "Settlement Class Notice Payment" means a maximum of Four Million United States dollars (U.S. \$4,000,000), as set forth in Section 23.1(c), for the costs of Settlement Class Notice, including any supplemental notice required, and compensation of the Settlement Class Notice Agent and the Claims Administrator to the extent the Claims Administrator performs notice-related duties that have been agreed to by the NFL Parties.

(oooo) "Settlement Class Notice Plan" means that document which sets forth the methods, timetable, and responsibilities for providing Settlement Class Notice to Settlement Class Members, as set forth in Section 14.1.

(pppp) "Settlement Date" means the date by which Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties have all signed this Settlement Agreement on behalf of the Class and Subclass Representatives, Settlement Class and Subclasses, and the NFL Parties, respectively.

(qqqq) "Settlement Trust" means the trust enacted pursuant to the Settlement Trust Agreement, as set forth in Section 23.7.

(rrrr) "Settlement Trust Account" means that account created under the Settlement Trust Agreement and held by the Trustee into which the NFL Parties will make payments pursuant to ARTICLE XXIII of this Settlement Agreement.

(ssss) "Settlement Trust Agreement" means the agreement that will establish the Settlement Trust and will be entered into by Co-Lead Class Counsel, the NFL Parties, and the Trustee, as set forth in Section 23.7(c).

(ttt) "Signature" means the actual signature by the person whose signature is required on the document, or on behalf of such person by a person authorized by a power of attorney or equivalent document to sign such documents on behalf of such person. Unless otherwise specified in this Settlement Agreement, a document requiring a Signature may be submitted by: (i) an actual original "wet ink" signature on hard copy; (ii) a PDF or other electronic image of an actual signature; or (iii) an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(uuuu) "Stadium Program Bonds" means the NFL's G3 and G4 bonds.

(vvvv) "Stroke" means stroke, as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10). A medically diagnosed Stroke does not include a transient cerebral ischaemic attack and related syndromes, as defined by ICD-10.

(wwww) "Subclass Counsel" means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely Arnold Levin of Levin, Fishbein, Sedran & Berman for Subclass 1, and Dianne M. Nast of NastLaw LLC for Subclass 2, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Subclasses 1 and 2.

(xxxx) "Subclass Representatives" means Shawn Wooden and Kevin Turner, or such other or different persons as may be designated by the Court as the representatives of the Settlement Subclasses 1 and 2.

(yyyy) "Supplemental Monetary Award" means the supplemental payment of monies from the Monetary Award Fund to a Settlement Class Member, as set forth in Section 6.6.

(zzzz) "Traumatic Brain Injury" means severe traumatic brain injury unrelated to NFL Football play, that occurs during or after the time the Retired NFL Football Player played NFL Football, consistent with the definitions in the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), Codes 854.04, 854.05, 854.14 and 854.15, and the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), Codes S06.9x5 and S06.9x6.

(aaaaa) "Tricare" means the federal program managed and administered by the United States Department of Defense through the Tricare Management Activity under which certain medical items, services, and/or prescription drugs are furnished to eligible members of the military services, military retirees, and military dependents under 10 U.S.C. § 1071, *et seq.*

(bbbbbb) "Trustee" means that person or entity approved by the Court as trustee of the Settlement Trust Account and as administrator of the qualified settlement fund for purposes of Treasury Regulation §1.468B-2(k)(3), as set forth in ARTICLE XXIII.

ARTICLE III Settlement Benefits for Class Members

Section 3.1 The Class and Subclass Representatives, by and through Co-Lead Class Counsel, Class Counsel and Subclass Counsel, and the NFL Parties, by and through Counsel for the NFL Parties, agree that, in consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of the Class Action Complaint and the Related Lawsuits, and subject to the terms and

conditions of this Settlement Agreement, the NFL Parties will, in addition to other obligations set forth in this Settlement Agreement:

(a) Provide compensation, as prescribed elsewhere in this Settlement Agreement, to those Settlement Class Members who are determined by the Claims Administrator to qualify for Monetary Awards or Derivative Claimant Awards pursuant to the proof and documentation requirements and criteria set forth in this Settlement Agreement;

(b) Provide qualified Settlement Class Members who are Retired NFL Football Players with the option to participate in the BAP and receive a BAP baseline assessment examination and BAP Supplemental Benefits, if eligible, pursuant to the requirements and criteria set forth in this Settlement Agreement; and

(c) Establish the Education Fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

ARTICLE IV **Information and Registration Process**

Section 4.1 Information

(a) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel will cause to be established and maintained a public website containing information about the Class Action Settlement (the “Settlement Website”), including the Settlement Class Notice and “Frequently Asked Questions.” Within ninety (90) days after the Effective Date, Co-Lead Class Counsel will cause the Settlement Website to be transitioned for claims administration purposes. The Settlement Website will be the launching site for secure web-based portals established and maintained by the Claims Administrator, BAP Administrator, and/or Lien Resolution Administrator for use by Settlement Class Members and their designated attorneys throughout the term of the Class Action Settlement. The Claims Administrator will post all necessary information about the Class Action Settlement on the Settlement Website, including, as they become available, information about registration deadlines and methods to participate in the BAP, the Claim Package requirements and Monetary Awards, and the Derivative Claim Package requirements and Derivative Claimant Awards. All content posted on the Settlement Website will be subject to advance approval by Co-Lead Class Counsel and Counsel for the NFL Parties.

(b) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel also will cause to be established and maintained an automated telephone system that uses a toll-free number or numbers to provide information about the Class Action Settlement. Within ninety (90) days after the

Effective Date, Co-Lead Class Counsel will cause the automated telephone system to be transitioned for claims administration purposes. Through this system, Settlement Class Members may request and obtain copies of the Settlement Class Notice, Settlement Agreement, Claim Form, Derivative Claim Form, and Appeals Form, and they may speak with operators for further information.

Section 4.2 Registration Methods and Requirements

(a) The Claims Administrator will establish and administer both online and hard copy registration methods for participation in the Class Action Settlement.

(b) The registration requirements will include information sufficient to determine if a registrant is a Settlement Class Member, including: (i) name; (ii) address; (iii) date of birth; (iv) Social Security Number (if any); (v) email address (if any), and whether email, the web-based portal on the Settlement Website, or U.S. mail is the preferred method of communication; (vi) identification as a Retired NFL Football Player, Representative Claimant or Derivative Claimant; (vii) dates and nature of NFL Football employment (e.g., Active List, practice squad, developmental squad), and corresponding identification of the employer Member Club(s) or assigned team(s) (for Retired NFL Football Players, or, for the subject Retired NFL Football Player or deceased Retired NFL Football Player in the case of Representative Claimants and Derivative Claimants); and (viii) Signature of the registering purported Settlement Class Member.

(i) In addition to the registration requirements in this Section 4.2(b), Representative Claimants also will identify the subject deceased or legally incapacitated or incompetent Retired NFL Football Player, including name, last known address, date of birth, and Social Security Number (if any), and will provide a copy of the court order, or other document issued by an official of competent jurisdiction, providing the authority to act on behalf of that deceased or legally incapacitated or incompetent Retired NFL Football Player.

(ii) In addition to the registration requirements in this Section 4.2(b), Derivative Claimants also will identify the subject Retired NFL Football Player or deceased Retired NFL Football Player and the relationship by which they assert the right under applicable state law to sue independently or derivatively.

(c) Unless good cause, as set forth in subsection (i), is shown, Settlement Class Members must register on or before 180 days from the date after the Effective Date that the Claims Administrator provides notice of the registration methods and requirements on the Settlement Website and on the automated telephone system. If a Settlement Class Member does not register by that deadline, that Settlement Class Member will be deemed ineligible for the BAP and BAP Supplemental Benefits, Monetary Awards and Derivative Claimant Awards.

(i) Good cause will include, without limitation, (a) that a Settlement Class Member who is a Representative Claimant had not been ordered by a court or other official of competent jurisdiction to be the authorized representative of the subject deceased or legally incapacitated or incompetent Retired NFL Football Player prior to the registration deadline (and the Representative Claimant seeks to register within 180 days of authorization by the court or other official of competent jurisdiction), or (b) that the subject Retired NFL Football Player timely registered prior to his death or becoming legally incapacitated or incompetent and his Representative Claimant seeks to register for that Retired NFL Football Player; or (c) that the subject Retired NFL Football Player timely registered and the Derivative Claimant seeks to register within thirty (30) days of that Retired NFL Football Player's submission of a Claim Package.

Section 4.3 Registration Review

(a) Upon receipt of a purported Settlement Class Member's registration, the Claims Administrator will review the information to determine whether the purported Settlement Class Member is a Settlement Class Member under the Settlement Agreement, and whether he or she has timely registered. In order to determine qualification for the BAP, as set forth in Section 5.1, the Claims Administrator will also determine if a registering Retired NFL Football Player has identified his participation in NFL Football that earns him at least one half of an Eligible Season. The Claims Administrator will then issue a favorable or adverse Notice of Registration Determination, within forty-five (45) days of receipt of the purported Settlement Class Member's registration, informing the purported Settlement Class Member whether he or she is a Settlement Class Member who has properly registered. To the extent the volume of registrations warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties.

(i) Favorable Notices of Registration Determination will include information regarding the sections of the Settlement Website and/or secure web-based portals that provide detailed information regarding the Claim Package and Monetary Awards, the Derivative Claim Package and Derivative Claimant Awards and, for Settlement Class Members who are Retired NFL Football Players, information regarding the BAP. The Notice of Registration Determination will inform the Settlement Class Member of his or her unique identifying number for future use, including on a Claim Form or Derivative Claimant Form.

(ii) Adverse Notices of Registration Determination will include information regarding how the purported Settlement Class Member can challenge the determination. The purported Settlement Class Member may submit a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The purported Settlement Class Member must present a sworn statement or other evidence in support of any written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iii) The NFL Parties can challenge, for good cause, a favorable Notice of Registration Determination by submitting a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The NFL Parties must present evidence in support of the written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iv) Any Notice of Challenge Determination may be appealed by the purported Settlement Class Member or the NFL Parties, provided that the NFL Parties' appeal is limited to challenging the purported Retired NFL Football Player's or subject Retired NFL Football Player's status as a Retired NFL Football Player, in writing to the Court within sixty (60) days after the date of the Notice of Challenge Determination. The parties may present evidence in support of, or in opposition to, the appeal. The Court will be provided access to all documents and information available to the Claims Administrator to aid in determining the appeal. The Court may, in its discretion, refer the appeal to the Special Master. The decision of the Court or the Special Master shall be final and binding.

(v) If either Co-Lead Class Counsel or Counsel for the NFL Parties believe that the Claims Administrator has issued a Notice of Registration Determination that reflects an improper interpretation of the Settlement Class definition set forth in Section 1.1, such counsel may petition the Court to resolve the issue, as set forth in Section 10.1(b)(i)(2). The Court may, in its discretion, refer the matter to the Special Master. If the Court or the Special Master determines that the Claims Administrator misinterpreted the Settlement Class definition, the decision of the Court or the Special Master will supersede the prior determination by the Claims Administrator.

ARTICLE V Baseline Assessment Program

Section 5.1 Qualification. All Retired NFL Football Players with at least one half of an Eligible Season, as defined in Section 2.1(kk), who timely registered to participate in the Class Action Settlement, as set forth in ARTICLE IV, will qualify for the BAP. For the avoidance of any doubt, an eligible Retired NFL Football Player who submits a claim for a Monetary Award, whether successful or not, may participate in the BAP, except a Retired NFL Football Player who submits a successful claim for a Monetary Award is not eligible to later receive BAP Supplemental Benefits.

Section 5.2 Scope of Program. The BAP will provide the opportunity for each qualified Retired NFL Football Player, as set forth in Section 5.1, to receive one (1) baseline assessment examination, which includes: (a) a standardized neuropsychological examination in accordance with the testing protocol set forth in Exhibit 2 performed by a neuropsychologist certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, who is a Qualified BAP Provider; and (b) a basic

neurological examination performed by a board-certified neurologist who is a Qualified BAP Provider. The diagnosis of Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment and Level 2 Neurocognitive Impairment made pursuant to the BAP must be agreed to by both the neuropsychologist and board-certified neurologist serving as Qualified BAP Providers. BAP baseline assessment examinations are intended to establish a physician/patient relationship between the Retired NFL Football Player and his Qualified BAP Providers. Retired NFL Football Players diagnosed during their BAP baseline assessment examinations by Qualified BAP Providers with Level 1 Neurocognitive Impairment will be eligible to receive BAP Supplemental Benefits, as set forth in Section 5.11. For the avoidance of any doubt, a Qualifying Diagnosis of Alzheimer's Disease, Parkinson's Disease, ALS or Death with CTE shall not be made through the BAP baseline assessment examination.

Section 5.3 Deadline for BAP Baseline Assessment Examination. A Retired NFL Football Player electing to receive a BAP baseline assessment examination must take it: (i) within two (2) years of the commencement of the BAP if he is age 43 or older on the Effective Date; or (ii) if he is younger than age 43 on the Effective Date, before his 45th birthday or within ten (10) years of the commencement of the BAP, whichever occurs earlier.

Section 5.4 Monetary Award Offset. If a Retired NFL Football Player in Subclass 1 chooses not to participate in the BAP and receives a Qualifying Diagnosis, as set forth in Section 6.3, on or after the Effective Date, that Retired NFL Football Player will be subject to a Monetary Award Offset (as set forth in Section 6.5(b)(iv)) based on his non-participation in the BAP unless the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis other than ALS prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3. This Offset does not apply to a Retired NFL Football Player who is in Subclass 2.

Section 5.5 BAP Term. The BAP will commence one hundred and twenty (120) days after the Effective Date and will end ten (10) years after it commences, except that the provision of BAP Supplemental Benefits to Retired NFL Football Players diagnosed with Level 1 Neurocognitive Impairment, as set forth in Exhibit 1, may extend beyond the term of the BAP for up to five (5) years as set forth in Section 5.11. Retired NFL Football Players, who are qualified as set forth in Section 5.1, will be entitled to one (1) baseline assessment examination within the applicable time limitations set forth in Section 5.3.

Section 5.6 BAP Administrator

(a) **Appointment and Oversight**

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint The Garretson Resolution Group, Inc. ("Garretson Group") as BAP Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the BAP Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the BAP Administrator will provide that the BAP Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the BAP-related provisions of the Settlement Agreement, and will require that the BAP Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the BAP Administrator. The BAP Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) will oversee the BAP Administrator, and may, at his or her sole discretion, request reports or information from the BAP Administrator.

(v) Beyond the reporting requirements set forth in Section 5.6(a)(iii)-(iv), beginning one month after the Effective Date, the BAP Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the BAP, and thereafter on a quarterly basis, or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, regarding the status and progress of the BAP. The monthly (or quarterly) report will include, without limitation, information regarding activity in the BAP, including: (a) the number and identity of Retired NFL Football Players with pending BAP appointments, (b) the monthly and total number of Retired NFL Football Players who took part in the BAP, and the identity of each Settlement Class Member who took part in the preceding month; (c) the monthly and total monetary amounts paid to Qualified BAP Providers; (d) the monthly and total number of Retired NFL Football Players eligible for BAP Supplemental Benefits, as set forth in Section 5.11, and the identity of each such Settlement Class Member; (e) any Retired NFL Football Player complaints regarding specific Qualified BAP Providers; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the BAP Administrator in the preceding month; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the BAP Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Retired NFL Football Players who took part in the BAP; (b) the monetary amount paid to Qualified BAP Providers; (c) the number of Retired NFL Football Players eligible for BAP Supplemental Benefits; (d) the

expenses/administrative costs incurred by the BAP Administrator; (e) the projected expenses/administrative costs for the remainder of the BAP Fund term; (f) the monies remaining in the BAP Fund; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(b) Compensation and Expenses. Reasonable compensation of the BAP Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the BAP Administrator's responsibilities will be paid out of the BAP Fund. The BAP Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the BAP Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the BAP Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the BAP Administrator will refund that amount to the BAP Fund.

(c) Liability. The Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the BAP Administrator.

(d) Replacement. The BAP Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the BAP Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed BAP Administrator for appointment by the Court.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the BAP Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the BAP Administrator, including, without limitation, its executive leadership team and all employees conducting BAP-related work, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the BAP Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the BAP Administrator regularly provides settlement administration, lien resolution, and other related services to settling parties and their attorneys, and Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master acknowledge and

agree that it shall not be a conflict of interest for the BAP Administrator to provide such services to such individuals or to receive compensation for such work.

Section 5.7 Retention and Oversight of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s)

(a) **Qualified BAP Providers**

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will establish and maintain a network of Qualified BAP Providers to provide baseline assessment examinations to Retired NFL Football Players, and to provide medical treatment to Retired NFL Football Players who receive BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator's selection of all Qualified BAP Providers will be subject to written approval of Co-Lead Class Counsel and Counsel for the NFL Parties, each of which will have the right to veto the selection of seven (7) Qualified BAP Providers unconditionally.

(ii) The BAP Administrator will select Qualified BAP Providers based on the following criteria: (a) education, training, licensing, credentialing, board certification, and insurance coverage; (b) ability to provide the specified baseline assessment examinations under the BAP; (c) ability to provide medical services under the BAP Supplemental Benefits; (d) ability to provide all required examinations and services in a timely manner; (e) geographic proximity to Retired NFL Football Players; and (f) rate structure and payment terms. Under no circumstances will a Qualified BAP Provider be selected or approved who has been convicted of a crime of dishonesty.

(iii) In order to be eligible for selection, each Qualified BAP Provider must provide the following information to the BAP Administrator: (a) state professional license number; (b) National Provider Identifier; (c) board-certification information, if any; (d) evidence of proper licensing and insurance coverage under applicable state laws; (e) experience, including number of years as a healthcare provider; (f) primary and additional service locations; (g) mailing and billing addresses; (h) tax identification information; (i) ability to provide the specified baseline assessment examinations; (j) capacity for new patients; (k) appointment accessibility; (l) languages spoken; (m) criminal record; and (n) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Provider (the "Provider Contract") to provide the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits. The Provider Contract will include, among other things, a description of the baseline assessment examinations that will be provided under the BAP; rates, billing, and payment terms; terms relating to licensing, credentials, board certification, and other qualifications; the amount and type of insurance to be maintained by the Qualified BAP Provider; procedures for scheduling, rescheduling, and cancelling BAP appointments; document retention policies and

procedures; and fraud policies. The Provider Contract will further provide: (a) that the Qualified BAP Provider will release and hold harmless the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Provider as part of the BAP; (b) that the Qualified BAP Provider will not seek payment from the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any medical service(s), examination(s), and/or test(s) or any medical treatment or care that are not part of the specified baseline assessment examinations or authorized for payment under the terms of the BAP Supplemental Benefits, except that the Qualified BAP Provider may seek payment from a Retired NFL Football Player or, where applicable, his or her insurer for any medical service(s), examination(s), and/or test(s) or any medical treatment or care that are not part of the specified baseline assessment examinations or BAP Supplemental Benefits, where the Retired NFL Football Player, or, where applicable, his or her insurer, has agreed in writing to authorize and pay for such medical service(s), examination(s), and/or test(s) or any medical treatment or care; and (c) that the Qualified BAP Provider will retain medical records for Retired NFL Football Players in accordance with Section 5.10.

(1) The Provider Contract will be drafted by the BAP Administrator, as overseen by the Special Master, and in consultation with and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties.

(2) The Provider Contract's fraud policies will contain the following warning against fraudulent conduct: "As a Qualified BAP Provider you have agreed to provide your services and make your diagnosis in good faith in accordance with best medical practices. Your diagnoses and billings will be audited on a periodic and random basis subject to the discretion of the BAP Administrator and Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). Any finding of fraudulent diagnoses or billings by you will be subject to, without limitation, referral to appropriate regulatory and disciplinary boards and agencies and/or federal authorities, the immediate termination of this contract, and your disqualification from serving as a diagnosing physician in any aspect of the Class Action Settlement."

(v) The BAP Administrator will audit the credentialing and performance of Qualified BAP Providers on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL Parties. The BAP Administrator may conduct onsite visits at the Qualified BAP Providers on a random or adverse selection basis to confirm their compliance with the Provider Contract described in Section 5.7(a)(iv).

(vi) All Qualified BAP Providers will bill the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for BAP baseline assessment examinations and treatments under the BAP Supplemental Benefits, subject to the coverage limits of the BAP Supplemental Benefits, consistent with the Provider Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator will establish and administer a system to audit Qualified BAP Providers' procedures for billing and providing BAP baseline assessment examinations and BAP Supplemental Benefits treatments. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized medical services. The BAP Administrator will bring abusive and fraudulent Qualified BAP Provider billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Provider Contract of any Qualified BAP Providers that are not in compliance with its terms.

(b) Qualified Pharmacy Vendor(s)

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will contract with one or more Qualified BAP Pharmacy Vendor(s) to provide pharmaceuticals covered by the BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator's selection of the Qualified BAP Pharmacy Vendor(s) will be subject to written approval of the Special Master, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties.

(ii) The BAP Administrator will select Qualified BAP Pharmacy Vendor(s) based on the following criteria: (a) proper licensing for operation as a mail order pharmacy in all U.S. states and territories; (b) nationwide coverage and ease of administration; and (c) rate structure and payment terms.

(iii) In order to be eligible for selection, each Qualified BAP Pharmacy Vendor must provide the following information to the BAP Administrator: (a) federal DEA and/or state license numbers, as applicable; (b) evidence of proper licensing under applicable state laws; (c) experience, including number of years as a mail order pharmacy; (d) information about processes required to submit and fulfill mail order prescriptions; (e) average processing and delivery time from submission of a valid prescription; (f) policies related to generic substitution of name-brand pharmaceutical products; (g) mailing and billing addresses; (h) tax identification information; (i) languages spoken; and (j) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Pharmacy Vendor (the "Pharmacy Contract") to provide the pharmaceuticals covered under the BAP Supplemental Benefits. The

Pharmacy Contract will include, among other things, a description of the pharmaceutical therapies that will be covered under the BAP Supplemental Benefits; rates, billing, and payment terms; terms relating to qualifications; procedures for submitting, filling, and shipping prescriptions; document retention policies and procedures; and fraud policies. The Pharmacy Contract will further provide: (a) that the Qualified BAP Pharmacy Vendor will release and hold harmless the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Pharmacy Vendor as part of the BAP; and (b) that the Qualified BAP Pharmacy Vendor will not seek payment from the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any prescriptions that are authorized for payment under the terms of the BAP Supplemental Benefits.

(v) The BAP Administrator will audit the performance of Qualified BAP Pharmacy Vendor(s) on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL.

(vi) All Qualified BAP Pharmacy Vendors will be reimbursed by the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP, subject to the coverage limits of the BAP Supplemental Benefits. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for covered prescriptions consistent with the Pharmacy Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator will establish and administer a system to audit Qualified BAP Pharmacy Vendor(s)' procedures for billing and providing approved BAP Supplemental Benefits prescriptions. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized prescriptions. The BAP Administrator will bring abusive and fraudulent Qualified BAP Pharmacy Vendor billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Pharmacy Contract of any Qualified BAP Pharmacy Vendor that are not in compliance with its terms.

Section 5.8 Scheduling and Providing Baseline Assessment Examinations. The Parties will establish, subject to Court approval, processes and procedures governing the scheduling and provision of BAP examinations.

Section 5.9 Other Communications with Retired NFL Football Players

(a) The BAP Administrator will send an Explanation of Benefits (“EOB”) statement to each Retired NFL Football Player following a BAP appointment. The statement will describe the services and medical examinations that were performed during the appointment.

(b) Beginning one (1) year after the Effective Date of the Settlement Agreement, the BAP Administrator will send Retired NFL Football Players who have not received baseline assessments and remain eligible to do so, an annual statement describing the BAP and requesting that he update any contact information that has changed in the preceding year.

(c) If a Retired NFL Football Player is represented by counsel and has provided such notice to the BAP Administrator, the BAP Administrator will copy his counsel of record on any written communications with the Retired NFL Football Player.

Section 5.10 Use and Retention of Medical Records

(a) All Retired NFL Football Players who participate in the BAP will be encouraged to provide their confidential medical records for use in medical research into cognitive impairment and safety and injury prevention with respect to football players. The provision of such medical records shall be subject to the reasonable informed consent of the Retired NFL Football Players, and in compliance with applicable law, including a HIPAA-compliant authorization form. Medical records and information used in medical research will be kept confidential.

(b) The BAP Administrator will retain the medical records of Retired NFL Football Players and other program-defined forms that must be completed by the Qualified BAP Providers.

(c) Qualified BAP Providers who provide BAP baseline assessment examinations will be required to retain all medical records from such visits in compliance with applicable state and federal laws; provided, however, that each Qualified BAP Provider will be required to retain all medical records in the format(s) prescribed by applicable state and federal laws and, notwithstanding any shorter time period permitted under applicable laws, will be required to retain such medical records for not less than ten (10) years after the conclusion of the BAP term.

(d) All Retired NFL Football Player medical records will be treated as confidential, as set forth in Section 17.2.

Section 5.11 BAP Supplemental Benefits. Each Retired NFL Football Player diagnosed by Qualified BAP Providers with a Level 1 Neurocognitive Impairment, as defined in Exhibit 1, shall be eligible for BAP Supplemental Benefits related to the Retired NFL Football Player’s impairment in the form of medical treatment, counseling and/or examination by Qualified BAP Providers, including, if medically

needed and prescribed by a Qualified BAP Provider, pharmaceuticals by Qualified BAP Pharmacy Vendor(s). BAP Supplemental Benefits shall comprise medical treatments and/or examinations generally accepted by the medical community. Subject to Sections 5.14, 23.1(a) and 23.3 of this Agreement, the monetary parameters for these benefits, taking into account such factors as the number of Retired NFL Football Players using the BAP and diagnosed with Level 1 Neurocognitive Impairment, shall be determined by Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, and with the approval of the Court. The BAP Supplemental Benefits must be used within the term of the BAP or within five (5) years of diagnosis of Level 1 Neurocognitive Impairment by Qualified BAP Providers, even if the five (5) year period extends beyond the term of the BAP, whichever is later. The BAP Administrator, as overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), and in consultation with, and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties, will establish the procedures governing BAP Supplemental Benefits.

Section 5.12 Diagnosing Physician Certifications. Qualified BAP Providers who diagnose a Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment, as set forth in Exhibit 1, must support that diagnosis with a Diagnosing Physician Certification and supporting medical records. The Qualified BAP Provider must provide the Diagnosing Physician Certification and copies of the supporting medical records to the Retired NFL Football Player, his counsel (if any), and the BAP Administrator.

Section 5.13 Conflicting Opinions of Qualified BAP Providers. If there is a lack of agreement, as required by Section 5.2 and Exhibit 1, between the two Qualified BAP Providers regarding whether a Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, the BAP Administrator may in its discretion: (a) request that the Qualified BAP Providers confer with each other in an attempt to resolve the conflict; (b) request that a second BAP baseline assessment examination be conducted by different Qualified BAP Providers; or (c) refer the results of the BAP baseline assessment examination and all relevant medical records to the Court for review and decision. In the event the conflict is referred to the Court, the decision of the Court as to whether the Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, will be final and binding.

Section 5.14 Funding. All aspects of the BAP, including, without limitation, its costs and expenses, payment of Qualified BAP providers, compensation of the BAP Administrator, and BAP Supplemental Benefits, will be paid from the BAP Fund. At the conclusion of the term of the BAP, the BAP Administrator will determine, in consultation with the Court, the maximum coverage amount necessary to hold in reserve for up to five (5) years for the provision of BAP Supplemental Benefits to Retired NFL Football Players diagnosed with Level 1 Neurocognitive Impairment during the term of the BAP, as set forth in Section 5.11. Any funds remaining in the BAP Fund after all BAP Supplemental Benefits have been provided to or otherwise reserved for

eligible Retired NFL Football Players will be transferred to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

ARTICLE VI **Monetary Awards for Qualifying Diagnoses**

Section 6.1 Eligible Retired NFL Football Players and Representative Claimants will be entitled to Monetary Awards as set forth in this Article.

Section 6.2 Eligibility

(a) A Settlement Class Member who is a Retired NFL Football Player or Representative Claimant is eligible for a Monetary Award if, and only if: (i) the Settlement Class Member timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (ii) the subject Retired NFL Football Player or deceased Retired NFL Football Player was diagnosed with a Qualifying Diagnosis; and (iii) the Settlement Class Member timely submits a Claim Package, subject to the terms and conditions set forth in ARTICLE VIII.

(b) A Representative Claimant of a deceased Retired NFL Football Player will be eligible for a Monetary Award only if the deceased Retired NFL Football Player died on or after January 1, 2006, or if the Court determines that a wrongful death or survival claim filed by the Representative Claimant would not be barred by the statute of limitations under applicable state law as of: (i) the date the Representative Claimant filed litigation against the NFL (and, where applicable, NFL Properties) relating to the subject matter of these lawsuits, if such a wrongful death or survival claim was filed prior to the Settlement Date; or (ii) the Settlement Date, where no such suit has previously been filed.

Section 6.3 Qualifying Diagnoses

(a) The following, as defined in Exhibit 1, are Qualifying Diagnoses eligible for a Monetary Award: (a) Level 1.5 Neurocognitive Impairment; (b) Level 2 Neurocognitive Impairment; (c) Alzheimer's Disease; (d) Parkinson's Disease; (e) Death with CTE; and (f) ALS.

(b) All Qualifying Diagnoses must be made by properly credentialed physicians as set forth in Exhibit 1 (Injury Definitions) for the particular Qualifying Diagnosis. A Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment may be made through a BAP baseline assessment examination as set forth in Section 5.2 and consistent with the terms of Exhibit 1 (Injury Definitions).

Section 6.4 Modification of Qualifying Diagnoses

(a) Following the Effective Date, on a periodic basis not to exceed once every ten (10) years, Co-Lead Class Counsel and Counsel for the NFL Parties agree to discuss in good faith possible modifications to the definitions of

Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. No such modifications can be made absent written agreement between Co-Lead Class Counsel and Counsel for the NFL Parties and approval by the Court.

(b) In no event will modifications be made to the Monetary Award levels in the Monetary Award Grid, except for inflation adjustment(s) as set forth in Section 6.7.

Section 6.5 Determination of Monetary Awards

(a) Settlement Class Members who the Claims Administrator determines are entitled to Monetary Awards will be compensated in accordance with the terms of the Monetary Award Grid and all applicable Offsets, as set forth in Exhibit 3 and below, except such compensation will be reduced by one percent (1%) to the extent that any Derivative Claimants submit for, and are entitled to, a Derivative Claimant Award based upon their relationships with the Retired NFL Football Player, as set forth in ARTICLE VII.

(b) Offsets. All Monetary Awards will be subject to downward adjustments, including based on a Settlement Class Member's age at the time of the Qualifying Diagnosis (as reflected in the Monetary Award Grid, as set forth in Exhibit 3), and as follows:

(i) Number of Eligible Seasons:

- (1) 4.5 Eligible Seasons: - 10%
- (2) 4 Eligible Seasons: - 20%
- (3) 3.5 Eligible Seasons: - 30%
- (4) 3 Eligible Seasons: - 40%
- (5) 2.5 Eligible Seasons: - 50%
- (6) 2 Eligible Seasons: - 60%
- (7) 1.5 Eligible Seasons: - 70%
- (8) 1 Eligible Season: - 80%
- (9) 0.5 Eligible Seasons: - 90%
- (10) 0 Eligible Seasons: - 97.5%

(ii) Medically diagnosed Stroke occurring prior to a Qualifying Diagnosis: - 75%

(iii) Medically diagnosed Traumatic Brain Injury occurring prior to a Qualifying Diagnosis: - 75%

(iv) Non-participation in the BAP by a Retired NFL Football Player in Subclass 1, except where the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3: - 10%

(c) For purposes of calculating the total number of Eligible Seasons earned by a Retired NFL Football Player or deceased Retired NFL Football Player under this Settlement Agreement, each Eligible Season and each half of an Eligible Season for which the subject Retired NFL Football Player did not otherwise earn an Eligible Season, will be summed together to reach a total number of Eligible Seasons (e.g., 3.5 Eligible Seasons).

(i) For the avoidance of any doubt, seasons in the World League of American Football, the NFL Europe League, or the NFL Europa League are specifically excluded from the calculation of an Eligible Season.

(d) If the Retired NFL Football Player receives a Qualifying Diagnosis prior to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, then the 75% Offset for medically diagnosed Stroke or medically diagnosed Traumatic Brain Injury will not apply. If the Retired NFL Football Player receives a Qualifying Diagnosis subsequent to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, and if the Settlement Class Member demonstrates, by clear and convincing evidence, that the Qualifying Diagnosis was not causally related to the Stroke or the Traumatic Brain Injury, then the 75% Offset will not apply.

(e) Multiple Offsets will be applied individually and in a serial manner to any Monetary Award or Supplemental Monetary Award. For example, if the Monetary Award before the application of Offsets is \$1,000,000, and two 10% Offsets apply, there will be a 19% aggregate downward adjustment of the award (*i.e.*, application of the first Offset will reduce the award by 10%, or \$100,000, to \$900,000, and application of the second Offset will reduce the award by an additional 10%, or \$90,000, to \$810,000).

Section 6.6 Supplemental Monetary Awards. If, during the term of the Monetary Award Fund, a Retired NFL Football Player who has received a Monetary Award based on a certain Qualifying Diagnosis subsequently is diagnosed with a different Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) may be entitled to a Supplemental Monetary Award. If the Monetary Award level in the Monetary Award Grid (“Grid Level”) for the subsequent Qualifying Diagnosis is greater than the Grid Level for the earlier Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) will be entitled to a payment that is equal to the Grid Level for the subsequent Qualifying Diagnosis, after application of all applicable Offsets, minus the Grid Level for the earlier Qualifying Diagnosis, after application of all applicable Offsets, but prior to any

deductions for the satisfaction of Liens. In other words, any amounts deducted from the earlier Monetary Award to satisfy Liens will not be considered in the calculation of the Supplemental Monetary Award, which may also require an amount deducted to satisfy any subsequent Liens. (By way of example only, a Retired NFL Football Player who receives a Monetary Award for Level 1.5 Neurocognitive Impairment that is \$1,000,000 after application of all Offsets, which is then reduced by \$20,000 to \$980,000 to satisfy a Lien, and who later receives a Qualifying Diagnosis for Level 2 Neurocognitive Impairment that would pay \$1,200,000 after application of all Offsets, where there are no additional Liens, shall be entitled to a Supplemental Monetary Award of \$200,000.)

Section 6.7 Inflation Adjustment. Monetary Award amounts set forth in Exhibit 3 will be subject to an annual inflation adjustment, beginning one year after the Effective Date, not to exceed two and a half percent (2.5%), the precise amount subject to the sound judgment of the Special Master (or the Claims Administrator after expiration of the term of the Special Master).

Section 6.8 Monetary Award Fund Term. The Monetary Award Fund will commence on the Effective Date and will end sixty-five (65) years after the Effective Date.

ARTICLE VII Derivative Claimant Awards

Section 7.1 All Settlement Class Members who are Derivative Claimants seeking Derivative Claimant Awards must do so through the submission of Derivative Claim Packages containing all required proof, as set forth in Section 8.2(b).

Section 7.2 Eligibility. A Settlement Class Member who is a Derivative Claimant is entitled to a Derivative Claimant Award if, and only if: (a) the Derivative Claimant timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (b) the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) has received a Monetary Award; (c) the Settlement Class Member timely submits a Derivative Claim Package, subject to the terms and conditions set forth in ARTICLE VIII; and (d) the Claims Administrator determines, based on a review of the records provided in the Derivative Claim Package and applicable state law, that the Derivative Claimant has a relationship with the subject Retired NFL Football Player that properly and legally provides the right under applicable state law to sue independently and derivatively.

Section 7.3 Determination of Derivative Claimant Awards. Settlement Class Members who the Claims Administrator determines are entitled to Derivative Claimant Awards will be compensated from the Monetary Award of the Retired NFL Football Player through whom the relationship is the basis of the claim (or his Representative Claimant), and from any Supplemental Monetary Award, in the amount of one percent (1%) of that Monetary Award and any Supplemental Monetary Award. If

there are multiple Derivative Claimants asserting valid claims based on the same subject Retired NFL Football Player, the Claims Administrator will divide and distribute the Derivative Claimant Award among those Derivative Claimants pursuant to the laws of the domicile of the Retired NFL Football Player (or his Representative Claimant, if any).

ARTICLE VIII **Submission and Review of Claim Packages** **and Derivative Claim Packages**

Section 8.1 All Settlement Class Members applying for Monetary Awards or Derivative Claimant Awards must submit Claim Packages or Derivative Claim Packages to the Claims Administrator.

Section 8.2 Content

(a) The content of Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Claim Form with the Personal Signature of the Retired NFL Football Player (or Representative Claimant) either on the Claim Form or on an acknowledgement form verifying the contents of the Claim Form; (ii) a Diagnosing Physician Certification; (iii) medical records reflecting the Qualifying Diagnosis; (iv) a HIPAA-compliant authorization form; and (v) records in the possession, custody or control of the Settlement Class Member demonstrating employment and participation in NFL Football.

(i) Representative Claimants of Retired NFL Football Players who died prior to the Effective Date do not need to include a Diagnosing Physician Certification in the Claim Package if the physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, also died prior to the Effective Date or was deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date. Instead, the Representative Claimant must provide evidence of that physician's death, incapacity or incompetence and of the qualifications of the diagnosing physician. For the avoidance of any doubt, all other content of Claim Packages must be submitted, including medical records reflecting the Qualifying Diagnosis.

(ii) In cases where a Retired NFL Football Player has received a Qualifying Diagnosis and the diagnosing physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, has died or has been deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date, or otherwise prior to completing a Diagnosing Physician Certification, the Retired NFL Football Player (or his Representative Claimant, if applicable) may obtain a Diagnosing Physician Certification from a separate qualified physician for the Qualifying Diagnosis as specified in Exhibit 1 based on an independent examination by the qualified physician and a review of the Retired NFL Football Player's medical records that formed the basis of the Qualifying Diagnosis by the deceased or legally incapacitated or incompetent physician. If the same Qualifying Diagnosis is found by both doctors, the date of

Qualifying Diagnosis used to calculate Monetary Awards shall be the date of the earlier Qualifying Diagnosis.

(b) The content of Derivative Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Derivative Claim Form with the Personal Signature of the Derivative Claimant either on the Derivative Claim Form or on an acknowledgement form verifying the contents of the Derivative Claim Form; and (ii) records sufficient to verify the relationship with the subject Retired NFL Football Player or deceased Retired NFL Football Player that properly and legally provides the Derivative Claimant the right under applicable state law to sue independently and derivatively.

(c) All statements made in Claim Forms, Derivative Claim Forms, any acknowledgement forms, and Diagnosing Physician Certifications will be sworn statements under penalty of perjury.

(d) Each Settlement Class Member has the obligation to submit to the Claims Administrator all of the documents required in Sections 8.1 and 8.2 to receive a Monetary Award or Derivative Claimant Award.

Section 8.3 Submission

(a) Settlement Class Members must submit Claim Packages and Derivative Claim Packages to the Claims Administrator in accordance with Section 30.15.

(i) Claim Packages must be submitted to the Claims Administrator no later than two (2) years after the date of the Qualifying Diagnosis or within two (2) years of the Effective Date, whichever is later. Failure to comply with this two (2) year time limitation will preclude a Monetary Award for that Qualifying Diagnosis, unless the Settlement Class Member can show substantial hardship that extends beyond the Retired NFL Football Player's Qualifying Diagnosis and that precluded the Settlement Class Member from complying with the two (2) year deadline, and submits the Claim Package within four (4) years after the date of the Qualifying Diagnosis or of the Effective Date, whichever is later.

(ii) Derivative Claim Packages must be submitted to the Claims Administrator no later than thirty (30) days after the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) receives a Notice of Monetary Award Claim Determination that provides a determination that the Retired NFL Football Player (or his Representative Claimant) is entitled to a Monetary Award. Failure to comply with this time limitation will preclude a Derivative Claimant Award based on that Monetary Award.

(b) Each Settlement Class Member will promptly notify the Claims Administrator of any changes or updates to the information the Settlement Class

Member has provided in the Claim Package or Derivative Claim Package, including any change in mailing address.

(c) All information submitted by Settlement Class Members to the Claims Administrator will be recorded in a computerized database that will be maintained and secured in accordance with all applicable federal, state and local laws, regulations and guidelines, including, without limitation, HIPAA. The Claims Administrator must ensure that information is recorded and used properly, that an orderly system of data management and maintenance is adopted, and that the information is retained under responsible custody. The Claims Administrator will keep the database in a form that grants access for claims administration use, but otherwise restricts access rights, including to employees of the Claims Administrator who are not working on claims administration for the Class Action Settlement.

(i) The Claims Administrator and Lien Resolution Administrator, and their respective agents, representatives, and professionals who are administering the Class Action Settlement, will have access to all information submitted by Settlement Class Members to the Claims Administrator and/or Lien Resolution Administrator necessary to perform their responsibilities under the Settlement Agreement.

(ii) All information submitted by Settlement Class Members to the Claims Administrator will be treated as confidential, as set forth in Section 17.2.

Section 8.4 Preliminary Review

(a) Within forty-five (45) days of the date on which the Claims Administrator receives a Claim Package or Derivative Claim Package from a Settlement Class Member, the Claims Administrator will determine the sufficiency and completeness of the required contents, as set forth in Section 8.2. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) The Claims Administrator will reject a claim submitted by a Settlement Class Member, subject to the cure provisions of Section 8.5, if the Claims Administrator has not received all required content.

Section 8.5 Deficiencies and Cure. For rejected Claim Packages or Derivative Claim Packages, the Claims Administrator will send a Notice of Deficiency to the Settlement Class Member, which Notice will contain a brief explanation of the Deficiency(ies) giving rise to rejection of the Claim Package or Derivative Claim Package, and will, where necessary, request additional information and/or documentation. The Claims Administrator will make available to the Settlement Class Member through a secure online web interface any document(s) with a Deficiency

needing correction or, upon request from the Settlement Class Member, will mail the Settlement Class Member a copy of such document(s). The Notice of Deficiency will be sent no later than forty-five (45) days from the date of receipt of the Claim Package or Derivative Claim Package by the Claims Administrator. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). The Notice of Deficiency will contain a recommendation for how, if possible, the Settlement Class Member can cure the Deficiency, and will provide a reasonable deadline not less than 120 days (from the date the Notice of Deficiency is sent to the Settlement Class Member) for the Settlement Class Member to submit Deficiency cure materials. Within that time period, the Settlement Class Member will have the opportunity to cure all Deficiencies and provide any requested additional information or documentation, except that the failure to submit timely a Claim Package or Derivative Claim Package in accordance with the terms of this Settlement Agreement cannot be cured other than upon a showing of substantial hardship as set forth in Section 8.3(a)(i). Any Claim Package or Derivative Claim Package that continues to suffer from a Deficiency identified on the Notice of Deficiency following the submission of documentation intended to cure the Deficiency will be denied by the Claims Administrator.

Section 8.6 Verification and Investigation

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will authorize the Claims Administrator and/or Lien Resolution Administrator, as applicable, consistent with HIPAA and other applicable privacy laws, to verify facts and details of any aspect of the Claim Package or Derivative Claim Package and/or the existence and amounts, if any, of any Liens. The Claims Administrator or Lien Resolution Administrator, at its sole discretion, may request additional documentation, which each Settlement Class Member agrees to provide in order to claim a Monetary Award or Derivative Claimant Award.

(b) The Claims Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim Package or Derivative Claim Package documentation, including, without limitation, as set forth in Section 10.3.

ARTICLE IX Notice of Claim Determinations, Payments, and Appeals

Section 9.1 Monetary Award Determination. Based upon its review of the Claim Package, and the results of any investigations of the Settlement Class Member's claim, the Claims Administrator will determine whether a Settlement Class Member qualifies for a Monetary Award and the amount of any such Award. In order to decide whether a Settlement Class Member is entitled to a Monetary Award, and at what level, the Claims Administrator will determine whether the Retired NFL Football Player or deceased Retired NFL Football Player has a Qualifying Diagnosis according to the Diagnosing Physician Certification, including consideration of, without limitation, the

qualifications of the diagnosing physician, or in the case of a deceased Retired NFL Football Player diagnosed by a deceased physician, as set forth in Section 8.2(a)(i), according to the supporting medical records. If the Claims Administrator determines that there is a Qualifying Diagnosis, it will determine the level of Monetary Award based on the Monetary Award Grid (attached as Exhibit 3) and a review of the Diagnosing Physician Certification for the age at the time of the Qualifying Diagnosis, and will review the Claim Package, including the Claim Form and medical records reflecting the Qualifying Diagnosis, for information relating to all other Offsets, and must apply all applicable Offsets to the Monetary Award. For the avoidance of any doubt, the Claims Administrator has no discretion to make a Monetary Award determination other than as set forth above.

(a) Evidence of NFL Employment and Participation. To the extent that the Claims Administrator determines that the Settlement Class Member has provided in the Claim Package insufficient evidence of the Retired NFL Football Player's NFL employment and participation to substantiate the claimed Eligible Seasons, the Claims Administrator will request that the NFL Parties and Member Clubs provide any employment or participation records of the Retired NFL Football Player in their reasonable possession, custody or control, which the NFL Parties and Member Clubs will provide in good faith. The Claims Administrator will consider all of the evidence provided to it by the Retired NFL Football Player and the NFL Parties and Member Clubs in determining the appropriate number of Eligible Seasons to apply to the Retired NFL Football Player's claim. The Claims Administrator shall credit only the Eligible Seasons substantiated by the overall evidence. To the extent there is no documentary evidence regarding an Eligible Season claimed by the Retired NFL Football Player beyond his sworn statement, the Claims Administrator will take into account the reasons offered by the Retired NFL Football Player for the lack of such documentation in arriving at its final decision.

(b) Timing of Monetary Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Monetary Award Claim Determination to the Settlement Class Member and the NFL Parties no later than sixty (60) days from the later of: (i) the date when a completed Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date, if any, when all Deficiencies with a Settlement Class Member's Claim Package have been deemed cured by the Claims Administrator; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely provided to the Claims Administrator; or (iv) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(c) Notice Content

(i) Notices of Monetary Award Claim Determinations that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An adverse Notice of Monetary Award Claim Determination does not preclude a Settlement Class Member from submitting a Claim Package in the future for a Monetary Award should the Retired NFL Football Player's medical condition change. The Claims Administrator shall develop reasonable procedures and rules to ensure the right of Settlement Class Members to submit a Claim Package for the same or different Qualifying Diagnoses in the future, while preventing unwarranted repetitive claims that do not disclose materially changed circumstances from prior claims made by the Settlement Class Member.

(ii) Notices of Monetary Award Claim Determinations that provide a determination that the Settlement Class Member is entitled to a Monetary Award will provide: (a) the net amount of that Monetary Award after application of Offsets; (b) a listing of the Offsets applied to that Monetary Award; (c) the Lien Resolution Administrator's determination of any amount deducted from the Monetary Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award under which identified Liens shall be resolved, as set forth in ARTICLE XI; (d) information regarding how the Settlement Class Member can appeal the Monetary Award determination, as set forth in Section 9.7; and (e) information regarding the timing of payment, as set forth in Section 9.3.

(d) NFL Parties' and Co-Lead Class Counsel's Review of Claim Package. If a Notice of Monetary Award Determination provides a determination that the Settlement Class Member is entitled to a Monetary Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.2 Derivative Claimant Award Determination. Based upon its review of the Derivative Claim Package, and the results of any investigations of the Derivative Claimant's claim, the Claims Administrator will determine whether a Derivative Claimant qualifies for a Derivative Claimant Award, as set forth in Section 7.3.

(a) Timing of Derivative Claimant Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Derivative Claimant Award Determination to the Settlement Class Member and the NFL Parties no later than thirty (30) days from the later of: (i) the date when a completed Derivative Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date when all Deficiencies with a Settlement Class Member's Derivative Claim Package have been determined by the Claims Administrator to be satisfactorily cured; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely

provided to the Claims Administrator; or (iv) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) Notice Content

(i) Notices of Derivative Claimant Award

Determinations that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An adverse Notice of Derivative Claimant Award Determination does not preclude a Derivative Claimant from submitting a Derivative Claim Package in the future for a Derivative Claimant Award should the Retired NFL Football Player receive a Supplemental Monetary Award or succeed on an appeal of a previously denied claim for a Monetary Award.

(ii) Notices of Derivative Claimant Award

Determinations that provide a determination that the Settlement Class Member is entitled to a Derivative Claimant Award will provide: (a) the amount of that Derivative Claimant Award; (b) the Lien Resolution Administrator's determination of any amount deducted from the Derivative Claimant Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Derivative Claimant Award under which identified Liens will be resolved, as set forth in ARTICLE XI; (c) information regarding how the Derivative Claimant can appeal the Derivative Claimant Award determination, as set forth in Section 9.7; and (d) information regarding the timing of payment, as set forth in Section 9.4.

(c) NFL Parties' and Co-Lead Class Counsel's Review of Derivative Claim Package. If a Notice of Derivative Claimant Award Determination provides a determination that the Settlement Class Member is entitled to a Derivative Claimant Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.3 Remuneration and Payment of Monetary Awards.

(a) The Claims Administrator will promptly pay any Monetary Awards to Settlement Class Members who qualify under the terms of the Monetary Award Grid and all applicable Offsets after the Claims Administrator sends a Notice of Monetary Award Claim Determination; provided, however, any such payment will not occur until after the completion of the processes for (i) appealing Monetary Award determinations, as set forth in Section 9.7; (ii) auditing claims and investigating claims for fraud, as set forth in Section 10.3; (iii) identifying and satisfying Liens, as set forth in

ARTICLE XI; and (iv) determining if any Derivative Claimants have filed timely, and are entitled to, Derivative Claimant Awards based on their relationship with the subject Retired NFL Football Player.

(b) In connection with a Monetary Award issued to a Representative Claimant, the Claims Administrator will abide by all substantive laws of the domicile of such Representative Claimant concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process applicable to such Representative Claimant. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

(c) Upon the completion of the Monetary Award Fund term, as set forth in Section 6.8, the Court shall determine the proper disposition of any funds remaining in the Monetary Award Fund consistent with the purpose of this Settlement, including to promote safety and injury prevention with respect to football players and/or the treatment or prevention of traumatic brain injuries.

Section 9.4 Remuneration and Payment of Derivative Claimant Awards

(a) The Claims Administrator will promptly pay any Derivative Claimant Awards to Settlement Class Members who qualify; provided, however, any such payment will not occur until after expiration or completion of: (i) the time period for Derivative Claimants to file Derivative Claim Packages, as set forth in Section 8.3(a)(ii), has expired; (ii) the process for appealing Derivative Claimant Awards, including appeals by any other Derivative Claimants asserting claims based on the same Retired NFL Football Player, as set forth in Section 9.7; (iii) the process for auditing claims and investigating claims for fraud, set forth in Section 10.3; and (iv) the process for identifying and satisfying Liens, as set forth in ARTICLE XI.

(b) In paying a Derivative Claimant Award to a minor, the Claims Administrator will abide by all substantive laws of the domicile of such Settlement Class Member concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process applicable to such Settlement Class Members. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

Section 9.5 Scope of Appeals. The Claims Administrator's determination as to whether a Settlement Class Member is entitled to a Monetary Award or Derivative Claimant Award under this Settlement Agreement, and/or the calculation of the Monetary Award or Derivative Claimant Award, is appealable by the Settlement Class Member, Co-Lead Class Counsel, or the NFL Parties based on their respective good faith belief that the determination by the Claims Administrator was incorrect.

Section 9.6 Appellant Fees and Limitations

(a) Any Settlement Class Member taking an appeal will be charged a fee of One Thousand United States dollars (U.S. \$1,000) by the Claims Administrator that must be paid before the appeal may proceed, which fee will be refunded if the Settlement Class Member's appeal is successful. If the appeal is unsuccessful, the fee will be paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(b) The NFL Parties may appeal up to ten (10) Monetary Award or Derivative Claimant Award determinations per calendar year, provided that, upon application by the NFL Parties, the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may permit the NFL Parties to take additional appeals in a calendar year on the basis of good cause. If the NFL Parties' appeal is unsuccessful, they will pay all administrative costs directly resulting from the appeal, and reasonable attorneys' fees, if any, incurred by the Settlement Class Member as a direct result of the appeal (collectively, "Appeal Costs"), provided that in no event will the NFL Parties be required to pay Appeal Costs in an amount greater than Two Thousand United States dollars (U.S. \$2,000).

(i) If the NFL Parties' appeal is unsuccessful, and the Appeal Costs exceed Two Thousand United States dollars (U.S. \$2,000), the NFL Parties' payment of Two Thousand United States dollars (U.S. \$2,000) will be divided pro-rata between the reimbursement of administrative costs and the reasonable attorneys' fees, if any, so long as each respective payment does not exceed the actual amount of such administrative costs or reasonable attorneys' fees.

(ii) The NFL Parties' payment of administrative costs hereunder will be made to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(c) Co-Lead Class Counsel may appeal up to ten (10) Monetary Award or Derivative Claimant Award determinations per calendar year on the basis of good cause.

Section 9.7 Submissions on Appeals

(a) The appellant must submit to the Court his or her notice of appeal, using an Appeals Form to be agreed upon by Co-Lead Class Counsel and the NFL Parties and provided by the Claims Administrator, with written copy to the appellee(s) Settlement Class Member or the NFL Parties (as applicable), and to the

Claims Administrator, no later than thirty (30) days after receipt of a Notice of Monetary Award Claim Determination or Notice of Derivative Claimant Award Determination. Appellants must present evidence in support of their appeal, and any written statements may not exceed five (5) single-spaced pages in length.

(b) The appellee(s) may submit a written opposition to the appeal no later than thirty (30) days after receipt of the Appeals Form. This written opposition must not exceed five (5) single-spaced pages in length. The Court will not deem the lack of an opposition to be an admission regarding the merits of the appeal. The appellant may not submit a reply.

Section 9.8 Review and Decision. The Court will make a determination based upon a showing by the appellant of clear and convincing evidence. The Court may be assisted, in its discretion, by any member of the Appeals Advisory Panel. The decision of the Court will be final and binding.

(a) Appeals Advisory Panel

(i) Within ninety (90) days after the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to, and jointly recommend to the Court for appointment, the members of the Appeals Advisory Panel. Under no circumstances may a member of the Appeals Advisory Panel have been convicted of a crime of dishonesty, or have been retained as an expert consultant or expert witness by one of the parties or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint.

(ii) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly retain the members of the Appeals Advisory Panel appointed by the Court.

(iii) Upon request of the Court or the Special Master, the Appeals Advisory Panel will take all steps necessary to provide sound advice with respect to medical aspects of the Class Action Settlement.

(iv) The Court will oversee the Appeals Advisory Panel, and may, in its discretion, request reports or information from the Appeals Advisory Panel.

(v) Compensation of the Appeals Advisory Panel, at a reasonable rate for their time agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, will be paid out of the Monetary Award Fund, except that compensation of an Appeals Advisory Panel member will be paid out of the BAP fund for reviewing and advising the Court whether a Retired NFL Football player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, in cases where there are conflicting diagnoses by Qualified BAP Providers.

(vi) Members of the Appeals Advisory Panel may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL

Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If any member of the Appeals Advisory Panel resigns, dies, is replaced, or is otherwise unable to continue in his or her position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed member for appointment by the Court.

(b) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between members of the Appeals Advisory Panel, on the one hand, and an appellant or appellee(s), on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

ARTICLE X **Class Action Settlement Administration**

Section 10.1 Special Master

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint a Special Master pursuant to Federal Rule of Civil Procedure 53.

(ii) It is the intention of the Parties that the Special Master will perform his or her responsibilities and take all steps necessary to faithfully oversee the implementation and administration of the Settlement Agreement for a term of five (5) years commencing on the Effective Date. The term of the Special Master may be extended by the Court.

(iii) The Special Master will maintain at all times appropriate and sufficient bonding insurance in connection with his or her performance of responsibilities under the Settlement Agreement. The cost for this insurance will be paid out of the Monetary Award Fund.

(iv) The Court may, at its sole discretion, request reports or information from the Special Master. The Special Master will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs. The Claims Administrator may assist with such reports if requested by the Special Master.

(v) Following the five (5) year term of the Special Master, and any extension(s) thereof, oversight of the administration of the Class Action Settlement will revert to the Court.

(b) Roles and Responsibilities

(i) The Special Master will, among other responsibilities set forth in this Settlement Agreement:

(1) Provide reports or information that the Court may, at its sole discretion, request from the Special Master. The Special Master will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(2) Oversee complaints raised by Co-Lead Class Counsel, Counsel for the NFL Parties, the BAP Administrator, Claims Administrator and/or the Lien Resolution Administrator regarding aspects of the Class Action Settlement;

(3) Hear appeals of registration determinations, if requested by the Court, as set forth in Section 4.3(a)(iv).

(4) Oversee the BAP Administrator, Claims Administrator and Lien Resolution Administrator, as set forth in Section 5.6(a)(iv), Section 10.2(a)(iv), and Section 11.1(a)(iv), and receive monthly and annual reports from those Administrators; and

(5) Oversee fraud detection and prevention procedures, and review and decide the appropriate disposition of potentially fraudulent claims as further specified in Section 10.3(i).

(c) Compensation and Expenses. Annual compensation of the Special Master will not exceed Two Hundred Thousand United States dollars (U.S. \$200,000). Such annual compensation will be shared equally by the NFL Parties and the Monetary Award Fund for the five (5) year term and any extensions thereof. The reasonable out-of-pocket costs and expenses of the Special Master directly incurred as a result of the performance of his or her responsibilities will be paid out of the Monetary Award Fund. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Special Master's out-of-pocket costs and expenses, in which case the Court will determine the reasonableness of such costs and expenses. If the Court determines that any costs and expenses are unreasonable, the Special Master will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Special Master will refund that amount to the Monetary Award Fund.

(d) Replacement. The Court, in its discretion, can replace the Special Master for good cause. If the Special Master resigns, dies, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties may file a motion for the appointment by the Court of a new Special Master.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Special Master, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), Co-Lead Class Counsel, Class Counsel, Subclass Counsel, the NFL Parties, Counsel for the NFL Parties, the BAP Administrator, the Claims Administrator, or the Lien Resolution Administrator, on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Court, may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

Section 10.2 Claims Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint BrownGreer PLC as Claims Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Claims Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the Claims Administrator will provide that the Claims Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Settlement Agreement, and will require that the Claims Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Claims Administrator. The Claims Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Claims Administrator, and may, at his or her sole discretion, request reports or information from the Claims Administrator.

(v) Beyond the reporting requirements set forth in Section 10.2(a)(iii)-(iv), beginning one month after the Effective Date, the Claims Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the Monetary Award Fund, and thereafter on a quarterly basis or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and the NFL Parties, regarding the status and progress of claims administration. The monthly (or quarterly) report will include,

without limitation: (a) the monthly and total number of Settlement Class Members who registered timely, and the biographical information for each Settlement Class Member who registered timely in the preceding month, as set forth in Section 4.2(c); (b) the identity of each Settlement Class Member who submitted a Claim Package or Derivative Claim Package in the preceding month, the review status of such package (e.g., under preliminary review, subject to a Notice of Deficiency, subject to verification and investigation, received a Notice of Claim Determination), and the monthly and total number of Settlement Class Member claims for Monetary Awards and Derivative Claimant Awards; (c) the monthly and total number of Monetary Awards and Derivative Claimant Awards paid; (d) the monthly and total number of each Qualifying Diagnosis for which a Monetary Award has been paid; (e) the monthly and total number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (f) the monthly identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant Awards; (g) the monthly expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; and (h) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the Claims Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Settlement Class Members, broken down by Qualifying Diagnosis, who received Monetary Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Monetary Awards; (b) the number of Settlement Class Members who received Derivative Claimant Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Derivative Claimant Awards; (c) the monetary amounts paid through Monetary Awards and Derivative Claimant Awards, including the monetary amounts over the term of the Class Action Settlement; (d) the number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (e) the identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant Awards; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; (g) the projected expenses/administrative costs for the remainder of the Monetary Award Fund term; (h) the monies remaining in the Monetary Award Fund; and (i) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vii) The NFL Parties may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of

the Claims Administrator, and the Claims Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time during the term of the Monetary Award Fund. Complete copies of the audit findings report will be provided to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties.

(b) Roles and Responsibilities

(i) The Claims Administrator will, among other responsibilities set forth in this Settlement Agreement:

(1) Maintain the Settlement Website, as set forth in Section 4.1(a);

(2) Maintain an automated telephone system to provide information about the Class Action Settlement, as set forth in Section 4.1(b);

(3) Establish and administer both online and hard copy registration methods, as set forth in Section 4.2(a);

(4) Review a purported Settlement Class Member's registration and determine its validity, as set forth in Section 4.3;

(5) Process and review Claim Packages and Derivative Claim Packages, as set forth in ARTICLE VIII;

(6) Determine whether Settlement Class Members who submit Claim Packages and Derivative Claim Packages are entitled to Monetary Awards or Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII;

(7) Audit Claim Packages and Derivative Claim Packages, and establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund, as set forth in Section 10.3; and

(8) Perform such other tasks reasonably necessary to accomplish the goals contemplated by this Settlement Agreement, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties.

(c) Compensation and Expenses. Reasonable compensation of the Claims Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Claims Administrator's responsibilities set forth in this Settlement Agreement will be paid out of the Monetary Award Fund. The Claims Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Claims Administrator's out-of-pocket costs and expenses, in which case the Court will determine

(or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the Claims Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Claims Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Claims Administrator.

(e) Replacement. The Claims Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Claims Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend a new proposed Claims Administrator for appointment by the Court.

(f) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Claims Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Claims Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members and their counsel (if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Claims Administrator regularly provides settlement claims administration and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that it shall not be a conflict of interest for the Claims Administrator to provide such services to such individuals or to receive compensation for such work.

Section 10.3 Audit Rights and Detection and Prevention of Fraud

(a) Co-Lead Class Counsel and Counsel for the NFL Parties each will have the absolute right and discretion, at any time, but at its sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Award and Derivative Claimant Award claims submitted by Settlement Class Members.

(b) In addition, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator will establish and implement procedures to detect

and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund. Among other fraud detection and prevention procedures, the Claims Administrator, with the approval of Co-Lead Class Counsel and Counsel for the NFL Parties, will institute the following procedures relating to claim audits:

(i) A Settlement Class Member whose claim has been selected for audit by the Claims Administrator, Co-Lead Class Counsel or Counsel for the NFL Parties may be required to submit additional records, including medical records, and information as requested by the party auditing the claim; and

(ii) A Settlement Class Member who refuses to cooperate with an audit, including by unreasonably failing or refusing to provide the auditing party with all records and information sought within the time frame specified, will have the claim denied by the Claims Administrator, without right to an appeal.

(c) On a monthly basis, the Claims Administrator will audit five percent (5%) of the total Claim Packages and Derivative Claim Packages that the Claims Administrator has found to qualify for Monetary Awards or Derivative Claimant Award during the preceding month. The Claims Administrator will select such Claim Packages and Derivative Claim Packages for auditing on a random basis or to address a specific concern raised by a Claim Package or Derivative Claim Package, but will audit at least one Claim Package, if any qualify, each month.

(d) In addition, the Claims Administrator will audit Claim Packages that: (i) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player took part in the BAP within the prior 365 days and was not diagnosed with that Qualifying Diagnosis during the BAP baseline assessment examination; (ii) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player submitted a different Claim Package within the prior 365 days based upon a diagnosis of that same Qualifying Diagnosis by a different physician, and that Claim Package was found not to qualify for a Monetary Award; and (iii) reflect a Qualifying Diagnosis made through a medical examination conducted at a location other than a standard treatment or diagnosis setting (e.g., hotel rooms).

(e) Upon selection of a Settlement Class Member's Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include the following records and information:

(i) All of the Retired NFL Football Player's medical records in the Settlement Class Member's possession, custody, or control that relate to the underlying medical condition that is the basis for the Qualifying Diagnosis claimed by the Settlement Class Member;

(ii) A list of all health care providers seen by the Retired NFL Football Player in the last five (5) years;

(iii) The Settlement Class Member's (or subject Retired NFL Football Player's) employment records from Member Clubs or other NFL Football employers, but only to the extent that the Settlement Class Member is authorized under applicable state law or Collective Bargaining Agreement to request and receive such records from the Member Club or other NFL Football employer;

(iv) Such other relevant documents or information within the Settlement Class Member's possession, custody, or control as may reasonably be requested by the Claims Administrator under the circumstances, including, if necessary, authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) created or obtained by any health care providers seen by the Settlement Class Member (or subject Retired NFL Football Player) in the last five (5) years; and

(v) Where the audit is conducted because of the circumstances set forth in Section 10.3(d), authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) held by the primary care physician of the Retired NFL Football Player and the medical records of all other physicians or neuropsychologists who have examined the Retired NFL Football Player relating to the Qualifying Diagnosis.

(f) Upon selection of a Settlement Class Member's Derivative Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include relevant documents or information within the Settlement Class Member's possession, custody, or control as may reasonably be requested by the Claims Administrator under the circumstances.

(g) When auditing a Settlement Class Member's claim for a Monetary Award or Derivative Claimant Award, the Claims Administrator will review the records and information relating to that claim and determine whether the Claim Form or Derivative Claim Form misrepresents, omits, and/or conceals material facts that affect the claim.

(h) If, upon completion of an audit, the Claims Administrator determines that there has not been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the process of issuing a Monetary Award or Derivative Claimant Award, subject to appeal, will proceed.

(i) If, upon completion of an audit, the Claims Administrator determines that there has been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the Claims Administrator will notify the Settlement Class Member and will refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings. The Special Master's review and findings shall take into account whether the misrepresentation, omission or concealment was intentional, and may include the following relief, without limitation: (a) denial of the claim in the event of fraud; (b) additional audits of claims from the same law firm or physician (if applicable), including those already paid; (c) referral of the attorney or physician (if applicable) to the appropriate disciplinary boards; (d) referral to federal authorities; (e) disqualification of the attorney, physician and/or Settlement Class Member from further participation in the Class Action Settlement; and/or (f) if a law firm is found by the Claims Administrator to have submitted more than one fraudulent submission on behalf of Settlement Class Members, claim submissions by that law firm will no longer be accepted, and attorneys' fees paid to the firm by the Settlement Class Member will be forfeited and paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(j) In addition, if the Claims Administrator at any time makes a finding (based on its own detection processes or from information received from Co-Lead Class Counsel or Counsel for the NFL Parties) of fraud by a Settlement Class Member submitting a claim for a Monetary Award or Derivative Claimant Award, and/or by the physician providing the Qualifying Diagnosis, including, without limitation, misrepresentations, omissions, or concealment of material facts relating to the claim, the Claims Administrator will notify the Settlement Class Member and will make a recommendation to Co-Lead Class Counsel and Counsel for the NFL Parties to refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings that may include, without limitation, those set forth in Section 10.3(i).

(i) If both Co-Lead Class Counsel and Counsel for the NFL Parties do not agree with the Claims Administrator's recommendation to refer a claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), they will notify the Claims Administrator, who will continue with the processing of the claim.

Section 10.4 The Claims Administrator will also establish system-wide processes to detect and prevent fraud, including, without limitation, claims processing quality training and review and data analytics to spot "red flags" of fraud, including, without limitation, alteration of documents, questionable signatures, duplicative documents submitted on claims, the number of claims from similar addresses or supported by the same physician or office of physicians, data metrics indicating patterns of fraudulent submissions, and such other attributes of claim submissions that create a reasonable suspicion of fraud.

ARTICLE XI Identification and Satisfaction of Liens

Section 11.1 Lien Resolution Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint Garretson Group as Lien Resolution Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Lien Resolution Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the Lien Resolution Administrator will provide that the Lien Resolution Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Lien-related provisions of the Settlement Agreement, and will require that the Lien Resolution Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Lien Resolution Administrator. The Lien Resolution Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Lien Resolution Administrator, and may, at his or her sole discretion, request reports or information from the Lien Resolution Administrator.

(b) Roles and Responsibilities. The Lien Resolution Administrator will, among other responsibilities set forth in this Settlement Agreement, administer the process for the identification and satisfaction of all applicable Liens, as set forth in Section 11.3. Each Settlement Class Member (and his or her respective counsel, if applicable) claiming a Monetary Award or Derivative Claimant Award, however, will be solely responsible for the satisfaction and discharge of all Liens.

(c) Compensation and Expenses. Reasonable compensation of the Lien Resolution Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Lien Resolution Administrator's responsibilities will be paid out of the Monetary Award Fund, unless otherwise specified herein. The Lien Resolution Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Lien Resolution Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable determines that any costs and expenses are unreasonable,

the Lien Resolution Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Lien Resolution Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Lien Resolution Administrator.

(e) Replacement. The Lien Resolution Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Lien Resolution Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Lien Resolution Administrator for appointment by the Court.

Section 11.2 Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Lien Resolution Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Lien Resolution Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Lien Resolution Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Lien Resolution Administrator regularly provides lien resolution and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that it shall not be a conflict of interest for the Lien Resolution Administrator to provide such services to such individuals or to receive compensation for such work.

Section 11.3 Lien Identification, Satisfaction and Discharge

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award in his or her Claim Form or Derivative Claim Form.

(b) Each Settlement Class Member (and counsel individually representing him or her, if any) shall cooperate with the Lien Resolution Administrator to identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D

Program sponsors with respect to any Monetary Award or Derivative Claimant Award as a prerequisite to receiving payment of any Monetary Award or Derivative Claimant Award, including by providing the requested information and authorizations to the Lien Resolution Administrator and/or Claims Administrator in the timeframe specified for so doing.

(c) Among other things, each Settlement Class Member will authorize the Lien Resolution Administrator to:

(i) Establish procedures and protocols to identify and resolve Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award;

(ii) Undertake to obtain an agreement in writing and other supporting documentation with CMS promptly following the Effective Date that:

(1) Establishes a global repayment amount per Qualifying Diagnosis and/or for all or certain Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program, or, alternatively, otherwise sets forth a conditional payment resolution process. Such amounts will be based on the routine costs associated with the medically accepted standard of care for the treatment and management of each Qualifying Diagnosis. The agreement, in writing, and supporting documentation with CMS will demonstrate reasonable proof of satisfaction of Medicare's Part A and/or Part B fee-for-service recovery claim in connection with Settlement Class Member's (who are or were beneficiaries of the Medicare Program) receipt of any Monetary Award or Derivative Claimant Award and any benefits provided pursuant to this Settlement Agreement.

(2) Establishes reporting processes recognized by CMS as satisfying the reporting obligations, if any, under the mandatory Medicare reporting requirements of Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, 110 Pub. L. No. 173, 121 Stat. 2492 ("MMSEA") in connection with this Settlement Agreement.

(iii) Fulfill all state and federal reporting obligations, including those to CMS that are agreed upon with CMS;

(iv) Satisfy Lien amounts owed to a Governmental Payor or, to the extent identified by the Class Member pursuant to Section 11.3(a), Medicare Part C or Part D Program sponsor for medical items, services, and/or prescription drugs paid on behalf of Settlement Class Members out of any Monetary Award or Derivative Claimant Award to the Settlement Class Member pursuant to this Settlement Agreement; and

(v) Transmit all information received from any Governmental Payor or Medicare Part C or Part D Program sponsor pursuant to such authorizations (i) to the NFL Parties, Claims Administrator, and/or Special Master solely for purposes of verifying compliance with the MSP Laws or other similar reporting

obligations and for verifying satisfaction and full discharge of all such Liens, or (ii) as otherwise directed by the Court.

(d) If the Lien Resolution Administrator is unable to negotiate a global repayment amount for some or all of the Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program with CMS, as set forth in Section 11.3(c)(ii)(1), the Lien Resolution Administrator will put in place a mechanism for resolving these Liens on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. In addition, the Lien Resolution Administrator will put in place a mechanism for resolving Liens owed to other Governmental Payors or Medicare Part C or Part D Program sponsors on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. These mechanisms for resolving such Liens on an individual basis will allow the Lien Resolution Administrator to: (i) satisfy such Lien amounts owed for medical items, services, and/or prescription drugs paid on behalf of a Settlement Class Member out of any Monetary Award to the Settlement Class Member, subject to the Settlement Class Member's right to object to the fact and/or amount of such Lien amount; and (ii) provide that the Lien Resolution Administrator's reasonable costs and expenses incurred in resolving such Liens, including the reasonable compensation of the Lien Resolution Administrator for such efforts, will be paid out of any Monetary Award to the Settlement Class Member.

(e) The Parties further understand and agree that the Lien Resolution Administrator's performance of functions described in this Article is not intended to modify the legal and financial rights and obligations of Settlement Class Members, including the duty to pay and/or arrange for reimbursement of each Settlement Class Member's past, current, or future bills or costs, if any, for medical items, services, and/or prescription drugs, and to satisfy and discharge any and all statutory recovery obligations for any Liens.

(f) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, the Claims Administrator will not pay any Monetary Award to a Settlement Class Member who is or was entitled to benefits under a Governmental Payor program or Medicare Part C or Part D Program prior to: (i) the Lien Resolution Administrator's determination of the final amount needed to satisfy the reimbursement obligation that any Governmental Payor or Medicare Part C or Part D Program sponsor states is due and owing (as reflected in a final demand letter or other formal written communication), and satisfaction and discharge of that reimbursement obligation as evidenced by the Lien Resolution Administrator's receipt of a written satisfaction and discharge from the applicable Governmental Payor or Medicare Part C or Part D Program sponsor; or (ii) the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(g) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, if any person or entity claims any Liens, other than those set forth in Section 11.3(f), with respect to a Settlement Class Member's

Monetary Award or Derivative Claimant Award, then the Claims Administrator will not pay any such Monetary Award or Derivative Claimant Award if the Claims Administrator or Lien Resolution Administrator has received notice of that Lien and there is a legal obligation to withhold payment to the Settlement Class Member under applicable federal or state law. The Claims Administrator will hold such Monetary Award or Derivative Claimant Award in an escrow account until the Settlement Class Member (and counsel individually representing him or her, if any) presents documentary proof, such as a court order or release or notice of satisfaction by the party asserting the Lien, that such Lien has been satisfied and discharged; or until the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award, Supplemental Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(h) Settlement Class Members who are or were entitled to benefits under Medicare Part C or Part D Programs may be required by statute or otherwise, when making a claim for and/or receiving compensation pursuant to this Settlement Agreement, to notify the relevant Medicare Part C or Part D Program sponsor or others of the existence of, and that Settlement Class Member's participation in, this Class Action Settlement. It is the sole responsibility of each Settlement Class Member to determine whether he or she has such a notice obligation, and to perform timely any such notice reporting.

Section 11.4 Indemnification. Each Settlement Class Member, on his or her own behalf, and on behalf of his or her estate, predecessors, successors, assigns, representatives, heirs, beneficiaries, executors, and administrators, in return for the benefits and consideration provided in this Settlement Agreement, will indemnify and forever hold harmless, and pay all final judgments, damages, costs, expenses, fines, penalties, interest, multipliers, or liabilities, including the costs of defense and attorneys' fees of, the Released Parties against any and all claims by Other Parties arising from, relating to, or resulting from (a) any undisclosed Lien relating to, or resulting from, compensation or benefits received by a Settlement Class Member pursuant to this Class Action Settlement and/or (b) the failure of a Settlement Class Member timely and accurately to report or provide information that is necessary for compliance with the MSP Laws, or for the Lien Resolution Administrator to identify and/or satisfy all Governmental Payors or Medicare Part C or Part D Program sponsors who may hold or assert a reimbursement right. The amount of indemnification will not exceed the total Monetary Award or Derivative Claimant Award for that Settlement Class Member's claim. **CLASS AND SUBCLASS REPRESENTATIVES AND SETTLEMENT CLASS MEMBERS ACKNOWLEDGE THAT THIS SECTION COMPLIES WITH ANY REQUIREMENT TO EXPRESSLY STATE THAT LIABILITY FOR SUCH CLAIMS IS INDEMNIFIED AND THAT THIS SECTION IS CONSPICUOUS AND AFFORDS FAIR AND ADEQUATE NOTICE.**

Section 11.5 No Admission. Any reporting performed by the Lien Resolution Administrator and/or Claims Administrator for the purpose of resolving Liens, if any, related to compensation provided to Settlement Class Members pursuant to

this Settlement Agreement does not constitute an admission by any Settlement Class Member or any Released Party of any liability or evidence of liability in any manner.

Section 11.6 The foregoing provisions of this Article are solely for the several benefit of the NFL Parties, the Lien Resolution Administrator, the Special Master, and the Claims Administrator. No Settlement Class Member (or counsel individually representing them, if any) will have any rights or defenses based upon or arising out of any act or omission of the NFL Parties or any Administrator with respect to this Article.

ARTICLE XII Education Fund

Section 12.1 An Education Fund will be established to fund programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs and other educational initiatives benefitting Retired NFL Football Players.

The Court shall approve these education programs, with input from Co-Lead Class Counsel, Counsel for the NFL Parties and medical experts, as further set forth below. Co-Lead Class Counsel and Counsel for the NFL Parties will agree to a protocol through which Retired NFL Football Players will actively participate in such initiatives.

Section 12.2 Co-Lead Class Counsel, with input from Counsel for the NFL Parties, and with Court approval, will take all necessary steps to establish the Education Fund and establish procedures and controls to manage and account for the disbursement of funds to the education projects and all other costs associated with the Education Fund.

ARTICLE XIII Preliminary Approval and Class Certification

Section 13.1 Promptly after execution, Co-Lead Class Counsel, Class Counsel and Subclass Counsel will file the Motion for Preliminary Approval of the Class Action Settlement and the Settlement Agreement as an exhibit thereto. Simultaneously, the Class and Subclass Representatives will file a Motion for Certification of Rule 23(b)(3) Class and Subclasses for Purposes of Settlement.

Section 13.2 The Parties agree to take all actions reasonably necessary to obtain the Preliminary Approval and Class Certification Order from the Court.

Section 13.3 The Parties agree to jointly request that the Court stay this action, and enjoin all Settlement Class Members, unless and until they have been excluded from the Settlement Class by action of the Court, or until the Court denies approval of the Class Action Settlement (and such denial is affirmed by the Court of last resort), or until the Settlement Agreement is otherwise terminated, from filing, commencing, prosecuting, intervening in, participating in and/or maintaining, as plaintiffs, claimants, or class members in, any other lawsuit or administrative, regulatory,

arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances at issue, in the Class Action Complaint and/or the Released Claims, except that claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits will not be stayed or enjoined. For the avoidance of any doubt, the Parties are not requesting that the Court stay any actions against Riddell.

(a) The Parties recognize that there may be further pleadings, discovery responses, documents, testimony, or other matters or materials owed by the Parties to each other pursuant to existing pleading requirements, discovery requests, pretrial rules, procedures, orders, decisions, or otherwise. As of the Settlement Date, each Party expressly waives any right to receive, inspect, or hear such pleadings, discovery, testimony, or other matters or materials during the pendency of the settlement proceedings contemplated by this Settlement Agreement and subject to further order of the Court.

Section 13.4 The Parties agree that any certification of the Settlement Class and Subclasses will be for settlement purposes only. The Parties do not waive or concede any position or arguments they have for or against certification of any class for any other purpose in any action or proceeding. Any class certification order entered in connection with this Settlement Agreement will not constitute an admission by the NFL Parties, or finding or evidence, that the Class and Subclass Representatives' claims, or the claims of any other Settlement Class Member, or the claims of the Settlement Class, are appropriate for class treatment if the claims were contested in this or any other federal, state, arbitral, or foreign forum. If the Court enters the proposed form of Preliminary Approval and Class Certification Order, the Final Order and Judgment will provide for vacation of the Final Order and Judgment and the Preliminary Approval and Class Certification Order in the event that this Settlement Agreement does not become effective.

Section 13.5 Upon entry of the Preliminary Approval and Class Certification Order, the statutes of limitation applicable to any and all claims or causes of action that have been or could be asserted by or on behalf of any Settlement Class Members related to the subject matter of the Settlement Agreement will be tolled and stayed to the extent not already tolled by the initiation of an action in this litigation or a Related Lawsuit. The limitations period will not begin to run again for any Settlement Class Member unless and until he or she is deemed to have Opted Out of the Settlement Class or this Settlement Agreement is terminated pursuant to ARTICLE XVI. In the event the Settlement Agreement is terminated pursuant to ARTICLE XVI, to the extent not otherwise tolled, the limitations period for each Settlement Class Member as to whom the limitations period had not expired as of the date of the Preliminary Approval and Class Certification Order will extend for the longer of thirty (30) days from the last required issuance of notice of termination or the period otherwise remaining before expiration. Notwithstanding the tolling agreement herein, the Parties recognize that any time already elapsed for any Class or Subclass Representatives or Settlement Class Members on any applicable statutes of limitations will not be reset, and no expired claims will be revived, by virtue of this tolling agreement. Class and Subclass Representatives

and Settlement Class Members do not admit, by entering into this Settlement Agreement, that they have waived any applicable tolling protections available as a matter of law or equity. Nothing in this Settlement Agreement will constitute an admission in any manner that the statute of limitations has been tolled for anyone outside the Settlement Class, nor does it constitute a waiver of legal positions regarding tolling.

ARTICLE XIV **Notice, Opt Out, and Objections**

Section 14.1 Notice

(a) As part of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Plaintiffs will submit to the Court a Settlement Class Notice Plan agreed upon by Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties.

(b) The Settlement Class Notice Plan, to be implemented by the Settlement Class Notice Agent following the Court's entry of the Preliminary Approval and Class Certification Order, and approval of the Settlement Class Notice (in the form of Exhibit 5), at the NFL Parties' expense, but not to exceed Four Million United States dollars (U.S. \$4,000,000), will be designed to meet the requirements of Fed. R. Civ. P. 23 (c)(2)(B), and will include: (i) direct notice by first-class mail; (ii) broad notice through the use of paid media including national radio spots, national consumer magazines, television and internet advertising; and (iii) electronic notice through the Settlement Website created under Section 4.1(a) and an automated telephone system created under Section 4.1(b).

(c) For the avoidance of any doubt, if there are any unused monies under the Four Million United States dollars (U.S. \$4,000,000) cap set forth in Section 14.1(b), those unused monies will remain with, or revert to, the NFL Parties.

(d) The Parties and the Claims Administrator will maintain a list of the names and addresses of each person to whom the Settlement Class Notice is transmitted in accordance with any order entered by the Court pursuant to ARTICLE XIII. These names and addresses will be kept strictly confidential and will be used only for purposes of administering this Class Action Settlement, except as otherwise ordered by the Court.

Section 14.2 Opt Outs

(a) The Settlement Class Notice will provide instructions regarding the procedures that must be followed to Opt Out of the Settlement Class pursuant to Fed. R. Civ. P. 23(c)(2)(B)(v). The Parties agree that, to Opt Out validly from the Settlement Class, a Settlement Class Member must submit a written request to Opt Out stating "I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323" (or substantially similar clear and unambiguous language) to the Claims Administrator on or before such date as is ordered by the Court. That written request also will contain the

Settlement Class Member's printed name, address, telephone number, and date of birth and enclose a copy of his or her driver's license or other government issued identification. A written request to Opt Out may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant seeking to exclude himself or herself from the Settlement Class. Attorneys for Settlement Class Members may submit a written request to Opt Out on behalf of a Settlement Class Member, but such request must contain the Personal Signature of the Settlement Class Member. The Claims Administrator will provide copies of all requests to Opt Out to Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties within seven (7) days of receipt of each such request. Valid requests to Opt Out from the Settlement Class will become effective on the Effective Date.

(b) All Settlement Class Members who do not timely and properly Opt Out from the Settlement Class will in all respects be bound by all terms of this Settlement Agreement and the Final Order and Judgment upon the Effective Date, will be entitled to all procedural opportunities and protections described in this Settlement Agreement and provided by the Court, and to all compensation and benefits for which they qualify under its terms, and will be barred permanently and forever from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Parties in any court of law or equity, arbitration tribunal, or administrative or other forum.

(c) Prior to the Final Approval Date, any Retired NFL Football Player, Representative Claimant, or Derivative Claimant may seek to revoke his or her Opt Out from the Settlement Class and thereby receive the benefits of this Class Action Settlement by submitting a written request to Co-Lead Class Counsel and Counsel for the NFL Parties stating "I wish to revoke my request to be excluded from the Settlement Class" (or substantially similar clear and unambiguous language), and also containing the Settlement Class Member's printed name, address, phone number, and date of birth. The written request to revoke an Opt Out must contain the Personal Signature of the Settlement Class Member seeking to revoke his or her Opt Out.

Section 14.3 Objections

(a) Provided a Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a), the Settlement Class Member may present written objections, if any, explaining why he or she believes the Class Action Settlement should not be approved by the Court as fair, reasonable, and adequate. No later than such date as is ordered by the Court, a Settlement Class Member who wishes to object to any aspect of the Class Action Settlement must file with the Court, or as the Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of the Settlement Class Member's objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court's attention. That written statement also will contain the Settlement Class Member's printed name, address, telephone number, and date of birth, written evidence

establishing that the objector is a Settlement Class Member, and any other supporting papers, materials, or briefs the Settlement Class Member wishes the Court to consider when reviewing the objection. A written objection may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant seeking to exclude himself or herself from the Settlement Class. Settlement Class Members who do not follow the procedures will be deemed to have waived any objections they may have.

(b) A Settlement Class Member may object on his or her own behalf or through an attorney hired at that Settlement Class Member's own expense, provided the Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a). Attorneys asserting objections on behalf of Settlement Class Members must: (i) file a notice of appearance with the Court by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct; (ii) file a sworn declaration attesting to his or her representation of each Settlement Class Member on whose behalf the objection is being filed or a copy of the contract (to be filed *in camera*) between that attorney and each such Settlement Class Member; and (iii) comply with the procedures described in this Section.

(c) A Settlement Class Member (or counsel individually representing him or her, if any) seeking to make an appearance at the Fairness Hearing must file with the Court, by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct, a written notice of his or her intention to appear at the Fairness Hearing, in accordance with the requirements set forth in the Preliminary Approval and Class Certification Order.

(d) Any Settlement Class Member who fails to comply with the provisions of this Section 14.3 will waive and forfeit any and all rights he or she may have to object to the Class Action Settlement.

ARTICLE XV **Communications to the Public**

Section 15.1 The form, content, and timing of any public statement announcing the filing of this Settlement Agreement will be subject to mutual agreement by Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties. The Parties and their counsel agree not to make any public statements, including statements to the media, that are inconsistent with the Settlement Agreement. Any communications to the public or the media made by or on behalf of the Parties and their respective counsel regarding the Class Action Settlement will be made in good faith and will be consistent with the Parties' agreement to take all actions reasonably necessary for preliminary and final approval of this Class Action Settlement. Any information contained in such communications will be balanced, fair, accurate, and consistent with the content of the Settlement Class Notice.

(a) Nothing herein is intended or will be interpreted to inhibit or interfere with the ability of Co-Lead Class Counsel, Class Counsel, Subclass Counsel,

or Counsel for the NFL Parties to communicate with the Court, their clients, or Settlement Class Members and/or their counsel.

(b) Co-Lead Class Counsel, Class Counsel and Subclass Counsel acknowledge and agree, and the Preliminary Approval and Class Certification Order will provide, that the NFL Parties have the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members on matters unrelated to the Class Action Settlement in connection with the NFL Parties' normal business.

ARTICLE XVI Termination

Section 16.1 Walk-Away Right of NFL Parties. Without limiting any other rights under this Settlement Agreement, the NFL Parties will have the absolute and unconditional right, in their sole good faith discretion, to unilaterally terminate and render null and void this Class Action Settlement and Settlement Agreement for any reason whatsoever following notice of Opt Outs and prior to the Fairness Hearing. The NFL Parties must provide written election to terminate this Settlement Agreement to Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and the Court prior to the Fairness Hearing.

Section 16.2 Party Termination Rights

(a) Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties each have the absolute and unconditional right, in their sole discretion, which discretion will be exercised in good faith, to terminate and render null and void this Class Action Settlement and Settlement Agreement if (i) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement that Co-Lead Class Counsel, Class Counsel, Subclass Counsel or Counsel for the NFL Parties reasonably and in good faith determines is material, including, without limitation, the Releases or the definition of the Settlement Class, or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the proposed Preliminary Approval and Class Certification Order or the proposed Final Order and Judgment (Exhibit 4) that Co-Lead Class Counsel, Class Counsel, Subclass Counsel or Counsel for the NFL Parties reasonably and in good faith believes is material. Such written election to terminate this Settlement Agreement must be made to the Court within thirty (30) days of such Court order.

(b) Co-Lead Class Counsel, Class Counsel and Subclass Counsel may not terminate and render null and void this Class Action Settlement and Settlement Agreement on the basis of the attorneys' fees award ordered, or modified, by the Court or any appellate court(s), as set forth in ARTICLE XXI.

Section 16.3 Post-Termination Actions

(a) In the event this Settlement Agreement is terminated or becomes null and void, this Settlement Agreement will not be offered into evidence or

used in this or in any other action in the Court, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum for any purpose, including, but not limited to, the existence, certification, or maintenance of any purported class. In addition, in such event, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement Agreement will be without prejudice to all Parties and will not be admissible into evidence and will not be deemed or construed to be an admission or concession by any of the Parties of any fact, matter, or proposition of law and will not be used in any manner for any purpose, and all Parties will stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

(b) In the event this Settlement Agreement is terminated or becomes null and void, the Parties will jointly move the Court to vacate the Preliminary Approval and Certification Order and any other orders certifying a Settlement Class provided.

(c) If this Settlement Agreement is terminated or becomes null and void after notice has been given, the Parties will provide Court-approved notice of termination to the Settlement Class. If a Party terminates the Settlement Agreement in accordance with Section 16.1 or Section 16.2, that Party will pay the cost of notice of termination.

(d) In the event this Settlement Agreement is terminated or becomes null and void, any unspent and uncommitted monies in the Funds will revert to the NFL Parties within ten (10) days, and all data provided by the NFL Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and/or Settlement Class Members shall be returned or destroyed.

ARTICLE XVII **Treatment of Confidential Information**

Section 17.1 Confidentiality of Information Relating to the Settlement Agreement. The Parties will treat all confidential or proprietary information shared hereunder, or in connection herewith, either prior to, on or after the Settlement Date, and any and all prior or subsequent drafts, representations, negotiations, conversations, correspondence, understandings, analyses, proposals, term sheets, and letters, whether oral or written, of any kind or nature, with respect to the subject matter hereof (“Confidential Information”) in conformity with strict confidence and will not disclose Confidential Information to any non-Party without the prior written consent of the Party that shared the Confidential Information, except: (i) as required by applicable law, regulation, or by order or request of a court of competent jurisdiction, regulator, or self-regulatory organization (including subpoena or document request), provided that the Party that shared the Confidential Information is given prompt written notice thereof and, to the extent practicable, an opportunity to seek a protective order or other confidential treatment thereof, provided further that the Party subject to such requirement or request cooperates fully with the Party that shared the Confidential Information in connection therewith, and only such Confidential Information is disclosed as is legally required to be

disclosed in the opinion of legal counsel for the disclosing Party; (ii) under legal (including contractual) or ethical obligations of confidentiality, on an as-needed and confidential basis to such Party's present and future accountants, counsel, insurers, or reinsurers; or (iii) with regard to any information that is already publicly known through no fault of such Party or its Affiliates. This Settlement Agreement, all exhibits hereto, any other documents filed in connection with the Class Action Settlement, and any information disclosed through a public court proceeding shall not be deemed Confidential Information.

Section 17.2 Confidentiality of Retired NFL Football Player Information

(a) All information relating to a Retired NFL Football Player that is disclosed to or obtained by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, or the Court, may be used only by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, or the Court for the administration of this Class Action Settlement according to the Settlement Agreement terms and conditions. All such information relating to a Retired NFL Football Player will be treated as Confidential Information hereunder, will be subject to the terms of Section 17.1 hereof, and, where applicable, will be treated as Protected Health Information subject to HIPAA and other applicable privacy laws.

ARTICLE XVIII Releases and Covenant Not to Sue

Section 18.1 Releases

(a) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Settlement Class, the Class and Subclass Representatives, and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), hereby waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in

connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits (“Claims”), including, without limitation, Claims:

(i) that were, are or could have been asserted in the Class Action Complaint or any other Related Lawsuit; and/or

(ii) arising out of, or relating to, head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events of whatever cause and its damages (whether short-term, long-term or death), whenever arising, including, without limitation, Claims for personal or bodily injury, including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life (and exacerbation and/or progression of personal or bodily injury), or wrongful death and/or survival actions as a result of such injury and/or exacerbation and/or progression thereof; and/or

(iii) arising out of, or relating to, neurocognitive deficits or impairment, or cognitive disorders, of whatever kind or degree, including, without limitation, mild cognitive impairment, moderate cognitive impairment, dementia, Alzheimer’s Disease, Parkinson’s Disease, and ALS; and/or

(iv) arising out of, or relating to, CTE; and/or

(v) arising out of, or relating to, loss of support, services, consortium, companionship, society, or affection, or damage to familial relations (including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vi) arising out of, or relating to, increased risk, possibility, or fear of suffering in the future from any head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events, and including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vii) arising out of, or relating to, medical screening and medical monitoring for undeveloped, unmanifested, and/or undiagnosed head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events; and/or

(viii) premised on any purported or alleged breach of any Collective Bargaining Agreement related to the issues in the Class Action Complaint and/or Related Lawsuits, except claims for workers’ compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

(b) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims,

arising from, relating to, or resulting from the reporting, transmittal of information, or communications between or among the NFL Parties, Counsel for the NFL Parties, the Special Master, Claims Administrator, Lien Resolution Administrator, any Governmental Payor, and/or Medicare Part C or Part D Program sponsor regarding any claim for benefits under this Settlement Agreement, including any consequences in the event that this Settlement Agreement impacts, limits, or precludes any Settlement Class Member's right to benefits under Social Security or from any Governmental Payor or Medicare Part C or Part D Program sponsor.

(c) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims, pursuant to the MSP Laws, or other similar causes of action, arising from, relating to, or resulting from the failure or alleged failure of any of the Released Parties to provide for a primary payment or appropriate reimbursement to a Governmental Payor or Medicare Part C or Part D Program sponsor with a Lien in connection with claims for medical items, services, and/or prescription drugs provided in connection with compensation or benefits claimed or received by a Settlement Class Member pursuant to this Settlement Agreement.

(d) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties, the Special Master, BAP Administrator, Claims Administrator, and their respective officers, directors, and employees from any and all Claims, including unknown Claims, arising from, relating to, or resulting from their participation, if any, in the BAP, including, but not limited to, Claims for negligence, medical malpractice, wrongful or delayed diagnosis, personal injury, bodily injury (including disease, trauma, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life), or death arising from, relating to, or resulting from such participation.

Section 18.2 Release of Unknown Claims. In connection with the releases in Section 18.1, the Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class acknowledge that they are aware that they may hereafter discover Claims now unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to actions or matters released herein. Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class explicitly took unknown or unsuspected claims into account in entering into the Settlement Agreement and it is the intention of the Parties fully, finally and forever to settle and release all Claims as provided in Section 18.1 with respect to all such matters.

Section 18.3 Scope of Releases

(a) Each Party acknowledges that it has been informed of Section 1542 of the Civil Code of the State of California (and similar statutes) by its counsel and that it does hereby expressly waive and relinquish all rights and benefits, if any, which it, he or she has or may have under said section (and similar sections) which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(b) The Parties acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other state, territory, or other jurisdiction was separately bargained for and that the Parties would not have entered into this Settlement Agreement unless it included a broad release of unknown claims relating to the matters released herein.

(c) The Releasors intend to be legally bound by the Releases.

(d) The Releases are not intended to prevent the NFL Parties from exercising their rights of contribution, subrogation, or indemnity under any law.

(e) Nothing in the Releases will preclude any action to enforce the terms of this Settlement Agreement in the Court.

(f) The Parties represent and warrant that no promise or inducement has been offered or made for the Releases contained in this Article except as set forth in this Settlement Agreement and that the Releases are executed without reliance on any statements or any representations not contained in this Settlement Agreement.

Section 18.4 Covenant Not to Sue. From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Class and Subclass Representatives, each Settlement Class Member, and the Settlement Class, on behalf of the Releasors, and each of them, covenant, promise, and agree that they will not, at any time, continue to prosecute, commence, file, initiate, institute, cause to be instituted, assist in instituting, or permit to be instituted on their, his, her, or its behalf, or on behalf of any other individual or entity, any proceeding: (a) alleging or asserting any of his or her respective Released Claims against the Released Parties in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, including, without limitation, the Claims set forth in Section 18.1; or (b) challenging the validity of the Releases. To the extent any such proceeding exists in any court, tribunal or other forum as of the Effective Date, the Releasors covenant, promise and agree to withdraw, and seek a dismissal with prejudice of, such proceeding forthwith.

Section 18.5 Covenant Regarding Amateur Football Litigation.

Settlement Class Members who receive Monetary Awards will agree, as a condition precedent to receiving Monetary Awards, to dismiss pending, and/or forebear from bringing, litigation relating to cognitive injuries against the National Collegiate Athletic Association and/or other collegiate, amateur or youth football organizations and entities.

Section 18.6 No Release for Insurance Coverage.

(a) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not release any Governmental Payor or Medicare Part C or Part D Program sponsor from its or their obligation to provide any health insurance coverage, major medical insurance coverage, or disability insurance coverage to a Settlement Class Member, or from any claims, demands, rights, or causes of action of any kind that a Settlement Class Member has or hereafter may have with respect to such individuals or entities.

(b) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(aaaa)(i)-(ii).

Section 18.7 Nothing contained in this Settlement Agreement, including the Release and Covenant Not to Sue provisions in this ARTICLE XVIII, affects the rights of Settlement Class Members to pursue claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

**ARTICLE XIX
Bar Order**

Section 19.1 Bar Order. As a condition to the Settlement, the Parties agree to move the Court for a bar order, as part of the Final Order and Judgment (substantially in the form of Exhibit 4), as set forth in Section 20.1.

Section 19.2 Judgment Reduction. With respect to any litigation by the Releasors against Riddell, the Releasors further agree that if a verdict in their favor results in a verdict or judgment for contribution or indemnity against the Released Parties, the Releasors will not enforce their right to collect this verdict or judgment to the extent that such enforcement creates liability against the Released Parties. In such event, the Releasors agree that they will reduce their claim or agree to a judgment reduction or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability against the Released Parties or any Other Party claiming contribution or indemnity.

ARTICLE XX

Final Order and Judgment and Dismissal With Prejudice

Section 20.1 The Parties will jointly seek a Final Order and Judgment from the Court, substantially in the form of Exhibit 4, approval and entry of which shall be a condition of this Settlement Agreement, that:

- (a) Approves the Class Action Settlement in its entirety pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable, and adequate;
- (b) Finds that this Settlement Agreement, with respect to each Subclass, is fair, reasonable, and adequate;
- (c) Confirms the certification of the Settlement Class for settlement purposes only;
- (d) Confirms the appointment of the Class and Subclass Representatives;
- (e) Confirms the appointment of Co-Lead Class Counsel, Class Counsel and Subclass Counsel;
- (f) Finds that the Settlement Class Notice satisfied the requirements set forth in Fed. R. Civ. P. 23(c)(2)(B);
- (g) Permanently bars, enjoins and restrains the Releasors (and each of them) from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Party;
- (h) Dismisses with prejudice the Class Action Complaint, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that the motion for an award of attorneys' fees and reasonable costs, as set forth in Section 21.1, will be made at an appropriate time to be determined by the Court;
- (i) Orders the dismissal with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, of all Related Lawsuits pending in the Court as to the Released Parties, thereby effectuating in part the Releases;
- (j) Orders all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, promptly to dismiss with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, all such Related Lawsuits as to the Released Parties, thereby effectuating in part the Releases;
- (k) Permanently bars and enjoins the commencement, assertion, and/or prosecution of any claim for contribution and/or indemnity in the Court, in any other federal court, state court, arbitration, regulatory agency, or other tribunal or

forum between the Released Parties and all alleged joint tortfeasors, other than Riddell, together with an appropriate judgment reduction provision;

(l) Confirms the appointment of the Special Master, Garretson Group as the BAP Administrator, BrownGreer as the Claims Administrator, Garretson Group as the Liens Resolution Administrator, and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed;

(m) Confirms that the Court retains continuing jurisdiction over the “qualified settlement funds,” as defined under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended, created under the Settlement Agreement; and

(n) Expressly incorporates the terms of this Settlement Agreement and provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class Members and this Settlement Agreement, to interpret, implement, administer and enforce the Settlement Agreement in accordance with its terms.

ARTICLE XXI Attorneys' Fees

Section 21.1 Award. Separately and in addition to the NFL Parties' payment of the monies set forth in ARTICLE XXIII and any consideration received by Settlement Class Members under this Settlement, the NFL Parties shall pay class attorneys' fees and reasonable costs. Co-Lead Class Counsel, Class Counsel and Subclass Counsel shall be entitled, at an appropriate time to be determined by the Court, to petition the Court on behalf of all entitled attorneys for an award of class attorneys' fees and reasonable costs. Provided that said petition does not seek an award of class attorneys' fees and reasonable costs exceeding One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000), the NFL Parties agree not to oppose or object to the petition. Ultimately, the award of class attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.

Section 21.2 Payment. No later than sixty (60) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000) into the Attorneys' Fees Qualified Settlement Fund, as set forth in Section 23.9, to be held in escrow until such payment shall be made as directed by the Court.

ARTICLE XXII Enforceability of Settlement Agreement and Dismissal of Claims

Section 22.1 It is a condition of this Settlement Agreement that the Court approve and enter the Preliminary Approval and Class Certification Order and Final Order and Judgment substantially in the form of Exhibit 4.

Section 22.2 The Parties agree that this Class Action Settlement is not final and enforceable until the Effective Date, except that upon entry of the Preliminary Approval and Class Certification Order, the NFL Parties will be obligated to make the Settlement Class Notice Payment as set forth in Sections 14.1 and 23.1.

Section 22.3 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Court will dismiss with prejudice all Released Claims by any and all Releasors against any and all Released Parties pending in the Court, and any and all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, will dismiss with prejudice the Related Lawsuits as to the Released Parties, including any related appeals.

Section 22.4 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Parties agree that each and every Releasor will be permanently barred and enjoined from commencing, filing, initiating, instituting, prosecuting, and/or maintaining any judicial, arbitral, or regulatory action against any Released Party with respect to any and all Released Claims.

Section 22.5 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, this Settlement Agreement will be the exclusive remedy for any and all Released Claims by or on behalf of any and all Releasors against any and all Released Parties, and no Releasor will recover, directly or indirectly, any sums from any Released Parties for Released Claims other than those received for the Released Claims under the terms of this Settlement Agreement, if any.

Section 22.6 From and after the Effective Date, if any Releasor, in violation of Section 18.4, commences, files, initiates, or institutes any new action or other proceeding for any Released Claims against any Released Parties, or continues to prosecute any pending claims, or challenges the validity of the Releases, in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, such action or other proceeding will be dismissed with prejudice and at such Releasor's cost; provided, however, before any costs may be assessed, counsel for such Releasor or, if not represented, such Releasor, will be given reasonable notice and an opportunity voluntarily to dismiss such new action or proceeding with prejudice. Furthermore, if the NFL Parties or any other Released Party brings any legal action before the Court to enforce its rights under this Settlement Agreement against a Settlement Class Member and prevails in such action, that Released Party will be entitled to recover any and all related costs and expenses (including attorneys' fees) from any Releasor found to be in violation or breach of his or her obligations under this Article.

ARTICLE XXIII **NFL Payment Obligations**

Section 23.1 Funding Amount. In consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of

the Class Action Complaint and the Related Lawsuits, and subject to the terms and conditions of this Settlement Agreement, the NFL Parties will pay in accordance with the funding terms set forth herein:

(a) Settlement Amount. Seven Hundred and Fifty Million United States dollars (U.S. \$750,000,000), which monies will be used to fund the BAP (up to a maximum of Seventy Five Million United States dollars (U.S. \$75,000,000)) and the Monetary Award Fund;

(b) Education Fund Amount. Ten Million United States dollars (U.S. \$10,000,000), which monies will be used exclusively to fund the Education Fund;

(c) Settlement Class Notice Payment. Up to a maximum of Four Million United States dollars (U.S. \$4,000,000); and

(d) Part of the Annual Compensation of the Special Master. Fifty percent (50%) of the annual compensation of the Special Master appointed by the Court, whose total annual compensation shall not exceed Two Hundred Thousand United States dollars (U.S. \$200,000).

(e) Notwithstanding any provision of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, or any subsequent legislation mandating or subsidizing health insurance coverage, the NFL Parties will pay, or cause to be paid, in full the amounts set forth above in Section 23.1(a)-(d), and will not bill any Governmental Payor or Medicare Part C or Part D Program for any such costs.

Section 23.2 Exclusive Payments. For the avoidance of any doubt, other than as set forth in Sections 9.6(b), 21.2 and 23.5, the NFL Parties will have no additional payment obligations in connection with this Settlement Agreement.

Section 23.3 Funding Terms

(a) The NFL Parties' payment obligations will be funded as follows:

(b) No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Ten Million United States dollars (U.S. \$10,000,000) into the Settlement Trust Account, as set forth in Section 23.7, for transfer by the Trustee into the Education Fund.

(c) No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of One Hundred and Eighty-Seven Million, Five Hundred Thousand United States dollars (U.S. \$187,500,000) into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund.

(d) No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Thirty-Five Million United States dollars (U.S. \$35,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund.

(e) On the one-year anniversary of the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Seventy-Five Million United States dollars (U.S. \$75,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund and/or Monetary Award Fund. The NFL Parties' payment will be allocated between the BAP Fund and Monetary Award Fund by the Trustee such that Ten Million United States dollars (U.S. \$10,000,000) is maintained in the BAP Fund immediately following that transfer. If the BAP Fund holds more than Ten Million dollars (U.S. \$10,000,000) on the one-year anniversary of the Effective Date, the full Seventy-Five Million United States dollars (U.S. \$75,000,000) will be transferred from the Settlement Trust Account into the Monetary Award Fund. Thereafter, if at any point during the second year of the BAP the balance of the BAP Fund falls below Ten Million United States dollars (U.S. \$10,000,000), the BAP Administrator and/or Co-Lead Class Counsel may request that the Special Master direct that additional sums from the Monetary Award Fund be allocated and transferred to the BAP Fund in order to maintain a balance of no less than Ten Million United States dollars (U.S. \$10,000,000), subject to the cap on BAP funding.

(f) On the two-year anniversary of the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Seventy-Five Million United States dollars (U.S. \$75,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund and/or Monetary Award Fund. The NFL Parties' payment will be allocated between the BAP Fund and Monetary Award Fund by the Trustee such that Ten Million United States dollars (U.S. \$10,000,000) is maintained in the BAP Fund immediately following that transfer. If the BAP Fund holds more than Ten Million United States dollars (U.S. \$10,000,000) on the two-year anniversary of the Effective Date, the full Seventy-Five Million United States dollars (U.S. \$75,000,000) will be transferred from the Settlement Trust Account into the Monetary Award Fund. Thereafter, if at any point during the third year of the BAP the balance of the BAP Fund falls below Ten Million United States dollars (U.S. \$10,000,000), the BAP Administrator and/or Co-Lead Class Counsel may request that the Special Master direct that additional sums from the Monetary Award Fund be allocated and transferred to the BAP Fund in order to maintain a balance of no less than Ten Million United States dollars (U.S. \$10,000,000) in the BAP Fund, subject to the cap on BAP funding.

(g) Beginning on the three-year anniversary of the Effective Date, and for the remainder of the funding term that concludes on the twenty-year anniversary of the Effective Date, the NFL Parties will pay, or cause to be paid, equal annual installment payments, sufficient in aggregate to pay the remaining unfunded Settlement Amount, into the Settlement Trust Account for transfer by the Trustee into the BAP Fund and/or Monetary Award Fund. The NFL Parties' annual payment will be allocated between the BAP Fund and Monetary Award Fund by the Trustee such that Ten Million United States dollars (U.S. \$10,000,000) is maintained in the BAP Fund

immediately following that transfer, except that under no circumstances will the aggregate transfers to the BAP Fund exceed Seventy-Five Million United States dollars (U.S. \$75,000,000) over the term of the BAP Fund.

(h) The NFL Parties will have the right (but not the obligation) to prepay, or cause to be prepaid, any of their payment obligations to the Funds under the Settlement Agreement. In connection with any such prepayment, the NFL Parties will designate in writing the payment obligation that is being prepaid and how such prepayment should affect the NFL Parties' remaining payment obligations (*i.e.*, whether the amount prepaid should be credited against the next payment obligation or to one or more subsequent payment obligations or a combination thereof).

Section 23.4 Notwithstanding the NFL Parties' funding obligations during the initial two (2) years of the Class Action Settlement and thereafter, if at any point following the Effective Date the balance of the Monetary Award Fund falls below Fifty Million United States dollars (U.S. \$50,000,000), the NFL Parties, upon forty-five (45) days advance written notice, and at the direction of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), will pay, or cause to be paid, additional installments of the remaining unfunded Settlement Amount into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund in order to maintain a balance of no less than Fifty Million United States dollars (U.S. \$50,000,000) in the Monetary Award Fund, unless a payment scheduled under Section 23.3 will occur within the forty-five (45) day notice period and that payment will maintain a balance of no less than Fifty Million United States dollars (U.S. \$50,000,000), or unless less than Fifty Million United States dollars (U.S. \$50,000,000) of the Settlement Amount remains unfunded. In such event, the remaining equal annual installment payments into the Settlement Trust Account for the remainder of the funding term will be recalculated accordingly.

Section 23.5 Additional Contingent Contribution. In the event that Co-Lead Class Counsel, Counsel for the NFL Parties and the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) agree that the Settlement Amount is insufficient to pay all approved claims from the Monetary Award Fund, the Special Master (or the Claims Administrator after expiration of the term of the Special Master) will make a recommendation to the Court that the NFL Parties pay, or cause to be paid, an additional contribution up to a maximum amount of Thirty-Seven Million, Five Hundred Thousand United States dollars (U.S. \$37,500,000) into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund. Upon Court approval of the recommendation, the NFL Parties will make this Additional Contingent Contribution into the Settlement Trust Account within sixty (60) days. In no event will the aggregate Additional Contingent Contribution made by the NFL Parties pursuant to this paragraph exceed Thirty-Seven Million, Five Hundred Thousand United States dollars (U.S. \$37,500,000).

Section 23.6 No Interest or Inflation Adjustment. For the avoidance of any doubt, the payments set forth in Section 23.1, and the contingent payments set forth in Section 23.5, will not be subject to any interest obligation or inflation adjustment.

Section 23.7 Settlement Trust

(a) Promptly following the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will file a motion seeking the creation of a Settlement Trust under Delaware law and the appointment of the Trustee. Co-Lead Class Counsel and Counsel for the NFL Parties will file a proposed Settlement Trust Agreement with the Court.

(b) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend Citibank, N.A. as the Trustee, subject to the approval of the Court. The Trustee may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, and granted by the Court. If the Trustee resigns, dies, is replaced, or is otherwise unable to continue employment in that position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Trustee for appointment by the Court.

(c) Upon Court approval of the proposed Settlement Trust Agreement, Co-Lead Class Counsel, the NFL Parties, the Trustee and the Special Master, will execute the Settlement Trust Agreement approved by the Court, thereby creating the Settlement Trust. The Settlement Trust will be structured and operated in a manner so that it qualifies as a “qualified settlement fund” under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended.

(d) The Settlement Trust will be composed of the Funds. The Trustee will establish the Settlement Trust Account, into which the NFL Parties will make payments as required by this Settlement Agreement. The Trustee will also establish three separate funds (the “Funds”), into which the Trustee will transfer funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and extension(s) thereof) and pursuant to the terms of this Settlement Agreement and on which the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) will have signatory authority. These Funds will constitute a single qualified settlement fund:

(i) The BAP Fund, which will be used to make payments for the BAP, as set forth in ARTICLE V.

(ii) The Monetary Award Fund, which will be used to make payments for: (a) all Monetary Awards and Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII; (b) certain costs and expenses of the appeals process, as set forth in ARTICLE IX; (c) costs and expenses of claims administration, excluding the fifty percent (50%) of the annual compensation of the Special Master paid by the NFL Parties, as set forth in ARTICLE X; and (d) certain costs and expenses of the Lien identification and resolution process, as set forth in ARTICLE XI;

(iii) The Education Fund, which will be used exclusively to make payments to support education programs and initiatives, as set forth in ARTICLE XII; and

(iv) The Settlement Trust Account, which will be used solely to transfer funds into the Funds described above in Section 23.7(d)(i)-(iii).

(e) The Settlement Trust will be managed by the Trustee as provided in the Settlement Trust Agreement, and both the Settlement Trust and Trustee will be subject to the continuing jurisdiction and supervision of the Court. Each of the Funds will be maintained in separate bank accounts at one or more federally insured depository institutions approved by Co-Lead Class Counsel and Counsel for the NFL Parties. The Trustee will have the authority to make payments from the Settlement Trust Account into the other Funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) and to make disbursements from the Funds at the direction of the Special Master (or the Claims Administrator at the direction of Co-Lead Class Counsel and Counsel for the NFL Parties, after expiration of the term of the Special Master and any extension(s) thereof), and consistent with the terms of this Settlement Agreement and the Settlement Trust Agreement.

(f) The Trustee will be responsible for making any necessary tax filings and payments of taxes, estimated taxes, and associated interest and penalties, if any, by the Settlement Trust and responding to any questions from, or audits regarding such taxes by, the Internal Revenue Service or any state or local tax authority. The Trustee also will be responsible for complying with all tax information reporting and withholding requirements with respect to payments made by the Settlement Trust, as well as paying any associated interest and penalties. Any such taxes, interest, and penalty payments will be paid by the Trustee from the Monetary Award Fund.

Section 23.8 Funds Investment

(a) Amounts deposited in each of the Funds will be invested conservatively in a manner designed to assure timely availability of funds, protection of principal and avoidance of concentration risk.

(b) Any earnings attributable to the BAP Fund, the Monetary Award Fund, and/or the Education Fund will be retained in the respective Fund.

Section 23.9 Attorneys' Fees Qualified Settlement Fund. Unless the Court directs otherwise, a separate fund (intended to qualify as a "qualified settlement fund" under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended) will be established out of which attorneys' fees will be paid pursuant to order of the Court, as set forth in ARTICLE XXI. This separate qualified settlement fund will be established pursuant to order of the Court, and will operate under Court supervision and control. This separate qualified settlement fund will be separate from the qualified settlement fund described in

Section 23.7(c) and any of the Funds described therein, and will not be administered by the Trustee. The Court will determine the form and manner of administering this fund, in which the NFL Parties will have no reversionary interest.

Section 23.10 Trustee Satisfaction of Monetary Obligations. Wherever in this Settlement Agreement the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator is authorized or directed, as the context may reflect, to pay, disburse, reimburse, hold, waive, or satisfy any monetary obligation provided for or recognized under any of the terms of this Settlement Agreement, the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator may comply with such authorization or direction by directing the Trustee to, as appropriate, pay, disburse, reimburse, hold, waive, or satisfy any such monetary obligation.

ARTICLE XXIV **Denial of Wrongdoing, No Admission of Liability**

Section 24.1 This Settlement Agreement, whether or not the Class Action Settlement becomes effective, is for settlement purposes only and is to be construed solely as a reflection of the Parties' desire to facilitate a resolution of the Class Action Complaint and of the Released Claims and Related Lawsuits. The NFL Parties expressly deny that they, or the other Released Parties, have violated any duty to, breached any obligation to, committed any fraud on, or otherwise engaged in any wrongdoing with respect to, the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member, and expressly deny the allegations asserted in the Class Action Complaint and Related Lawsuits, and deny any and all liability related thereto. Neither this Settlement Agreement nor any actions undertaken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of this Settlement Agreement will constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member in this or any other action or proceeding.

Section 24.2 In no event will the Settlement Agreement, whether or not the Class Action Settlement becomes effective, or any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions, or any actions undertaken in this Settlement Agreement, in any way be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or an admission

or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member of any claims, causes of action, or remedies. This Section 24.2 shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

ARTICLE XXV **Representations and Warranties**

Section 25.1 Authority. Co-Lead Class Counsel, Class Counsel and Subclass Counsel represent and warrant as of the Settlement Date that they have authority to enter into this Settlement Agreement on behalf of the Class and Subclass Representatives.

Section 25.2 Class and Subclass Representatives. Each of the Class and Subclass Representatives, through a duly authorized representative, represents and warrants that he: (i) has agreed to serve as a representative of the Settlement Class proposed to be certified herein; (ii) is willing, able, and ready to perform all of the duties and obligations as a representative of the Settlement Class; (iii) is familiar with the pleadings in In re: National Football League Players' Concussion Injury Litigation, MDL 2323, or has had the contents of such pleadings described to him; (iv) is familiar with the terms of this Settlement Agreement, including the exhibits attached to this Settlement Agreement, or has received a description of the Settlement Agreement from Co-Lead Class Counsel, Class Counsel and/or Subclass Counsel, and has agreed to its terms; (v) has consulted with, and received legal advice from, Co-Lead Class Counsel, Class Counsel and/or Subclass Counsel about the litigation, this Settlement Agreement (including the advisability of entering into this Settlement Agreement and its Releases and the legal effects of this Settlement Agreements and its Releases), and the obligations of a representative of the Settlement Class; (vi) has authorized Co-Lead Class Counsel, Class Counsel and/or Subclass Counsel to execute this Settlement Agreement on his behalf; and (vii) will remain in and not request exclusion from the Settlement Class and will serve as a representative of the Settlement Class until the terms of this Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that such Class or Subclass Representative cannot represent the Settlement Class.

Section 25.3 NFL Parties. The NFL Parties represent and warrant as of the Settlement Date that: (i) they have all requisite corporate power and authority to execute, deliver, and perform this Settlement Agreement; (ii) the execution, delivery, and performance by the NFL Parties of this Settlement Agreement has been duly authorized by all necessary corporate action; (iii) this Settlement Agreement has been duly and validly executed and delivered by the NFL Parties; and (iv) this Settlement Agreement constitutes their legal, valid, and binding obligation.

Section 25.4 Investigation and Future Events. The Parties and their counsel represent and warrant that they have each performed an independent

investigation of the allegations of fact and law made in connection with the Class Action Complaint in In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323, and may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of this Settlement Agreement. Nevertheless, the Parties intend to resolve their disputes pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, this Settlement Agreement will remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Settlement Agreement will not be subject to rescission or modification by reason of any change or difference in facts or law.

Section 25.5 Security

(a) The NFL Parties represent and warrant that the NFL currently maintains an investment grade rating on its Stadium Program Bonds, as rated by Fitch Ratings. If the rating on the Stadium Program Bonds falls below investment grade during the twenty-year funding term of the Monetary Award Fund, Co-Lead Class Counsel and Counsel for the NFL Parties will negotiate in good faith regarding a security arrangement on the remaining unfunded portion of the Settlement Amount.

(b) If the identity of the rating agency that rates the NFL's Stadium Program Bonds changes during the funding term of the Monetary Award Fund, then an investment grade rating by the new rating agency on the NFL's Stadium Program Bonds will satisfy the NFL Parties' obligations under Section 25.5(a).

(c) The applicable definition of "investment grade" will be as provided by the rating agency rating the NFL's Stadium Program Bonds.

ARTICLE XXVI Cooperation

Section 26.1 The Parties will cooperate, assist, and undertake all reasonable actions to accomplish the steps contemplated by this Settlement Agreement and to implement the Class Action Settlement on the terms and conditions provided herein.

Section 26.2 The Parties agree to take all actions necessary to obtain final approval of the Class Action Settlement and entry of a Final Order and Judgment, including the terms and provisions described in this Settlement Agreement, and, upon final approval and entry of such order, an order dismissing the Class Action Complaint and Related Lawsuits with prejudice as to the Class and Subclass Representatives, the Settlement Class, and each Settlement Class Member.

Section 26.3 The Parties and their counsel agree to support the final approval and implementation of this Settlement Agreement and defend it against objections, appeal, collateral attack or any efforts to hinder or delay its approval and implementation. Neither the Parties nor their counsel, directly or indirectly, will encourage any person to object to the Class Action Settlement or assist them in doing so.

ARTICLE XXVII

Continuing Jurisdiction

Section 27.1 Pursuant to the Final Order and Judgment, the Court will retain continuing and exclusive jurisdiction over the Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Liens Resolution Administrator, Appeals Advisory Panel, and Trustee with respect to the terms of the Settlement Agreement. Any disputes or controversies arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Settlement Agreement will be made by motion to the Court. In addition, the Parties, including each Settlement Class Member, are hereby deemed to have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement Agreement. The terms of the Settlement Agreement will be incorporated into the Final Order and Judgment of the Court, which will allow that Final Order and Judgment to serve as an enforceable injunction by the Court for purposes of the Court's continuing jurisdiction related to the Settlement Agreement.

(a) Notwithstanding any contrary law applicable to the underlying claims, this Settlement Agreement and the Releases hereunder will be interpreted and enforced in accordance with the laws of the State of New York, without regard to conflict of law principles.

ARTICLE XXVIII

Role of Co-Lead Class Counsel, Class Counsel and Subclass Counsel

Section 28.1 Co-Lead Class Counsel and Class Counsel acknowledge that, under applicable law, their respective duty is to the entire Settlement Class, to act in the best interest of the Settlement Class as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the Settlement Class.

Section 28.2 Subclass Counsel acknowledge that, under applicable law, their respective duty is to their respective Subclasses, to act in the best interest of the respective Subclass as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the respective Subclass.

ARTICLE XXIX

Bargained-For Benefits

Section 29.1 Nothing in the Collective Bargaining Agreement will preclude Settlement Class Members from receiving benefits under the Settlement Agreement. In addition, the fact that a Settlement Class Member has signed, or will sign, a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement will not preclude the Settlement Class Member from receiving benefits under the Settlement Agreement, and the NFL Parties agree not to assert any defense or objection to the Settlement Class Member's receipt of benefits under the Settlement Agreement on the ground that he executed a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement.

Section 29.2 A Retired NFL Football Player's participation in the Settlement Agreement will not in any way affect his eligibility for bargained-for benefits under the Collective Bargaining Agreement or the terms or conditions under which those benefits are provided, except as set forth in Section 18.1.

ARTICLE XXX

Miscellaneous Provisions

Section 30.1 No Assignment of Claims. Neither the Settlement Class nor any Class or Subclass Representative or Settlement Class Member has assigned, will assign, or will attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint. Any such assignment, or attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint will be void, invalid, and of no force and effect and the Claims Administrator shall not recognize any such action.

Section 30.2 Individual Counsel

(a) Counsel individually representing a Settlement Class Member, and acting on his or her behalf, may submit all claim forms, proof, correspondence, or other documents to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator on behalf of that Settlement Class Member; provided, however, that counsel individually representing a Settlement Class Member may not sign, on behalf of that Settlement Class Member: (i) an Opt Out request; (ii) a revocation of an Opt Out; (iii) an objection, as set forth in Section 14.3; (iv) a Claim Form, (v) a Derivative Claim Form, or (vi) an Appeals Form.

(b) Where a Settlement Class Member indicates in writing to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator that he or she is individually represented by counsel, the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator will copy the counsel individually representing a Settlement Class Member on any written communications with the Settlement Class Member. Any communications, whether

written or oral, by the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator with counsel individually representing a Settlement Class Member will be deemed to be a communication directly with such individually represented Settlement Class Member.

Section 30.3 Integration. This Settlement Agreement and its exhibits, attachments, and appendices will constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters, conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement, including the Settlement Term Sheet dated August 29, 2013. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

Section 30.4 Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and will not affect the meaning or interpretation of this Settlement Agreement in any manner. Any inconsistency between the headings used in this Settlement Agreement and the text of the Articles and Sections of this Settlement Agreement will be resolved in favor of the text.

Section 30.5 Incorporation of Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, any inconsistency between this Settlement Agreement and any attachments, exhibits, or appendices hereto will be resolved in favor of this Settlement Agreement.

Section 30.6 Amendment. This Settlement Agreement will not be subject to any change, modification, amendment, or addition without the express written consent of Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties, on behalf of all Parties to this Settlement Agreement.

Section 30.7 Mutual Preparation. The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arms' length. Neither the Settlement Class Members nor the NFL Parties, nor any one of them, nor any of their counsel will be considered to be the sole drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement. This Settlement Agreement will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

Section 30.8 Beneficiaries. This Settlement Agreement will be binding upon the Parties and will inure to the benefit of the Settlement Class Members and the Released Parties. All Released Parties who are not the NFL Parties are intended third-party beneficiaries who are entitled to enforce the terms of the Releases and Covenant

Not to Sue set forth in ARTICLE XVIII. No provision in this Settlement Agreement is intended to create any third-party beneficiary to this Settlement Agreement other than the Released Parties. Nothing expressed or implied in this Settlement Agreement is intended to or will be construed to confer upon or give any person or entity other than Class and Subclass Representatives, the Settlement Class Members, Co-Lead Class Counsel, Class Counsel and Subclass Counsel, the NFL Parties, the Released Parties, and Counsel for the NFL Parties, any right or remedy under or by reason of this Settlement Agreement.

Section 30.9 Extensions of Time. Co-Lead Class Counsel and Counsel for the NFL Parties may agree in writing, subject to approval of the Court where required, to reasonable extensions of time to implement the provisions of this Settlement Agreement.

Section 30.10 Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and a facsimile signature will be deemed an original signature for purposes of this Settlement Agreement.

Section 30.11 Good Faith Implementation. Co-Lead Class Counsel and Counsel for the NFL Parties will undertake to implement the terms of this Settlement Agreement in good faith. Before filing any motion or petition in the Court raising a dispute arising out of or related to this Settlement Agreement, Co-Lead Class Counsel and Counsel for the NFL Parties will consult with each other in good faith and certify to the Court that they have conferred in good faith.

Section 30.12 Force Majeure. The Parties will be excused from any failure to perform timely any obligation hereunder to the extent such failure is caused by war, acts of public enemies or terrorists, strikes or other labor disturbances, fires, floods, acts of God, or any causes of the like or different kind beyond the reasonable control of the Parties.

Section 30.13 Waiver. The waiver by any Party of any breach of this Settlement Agreement by another Party will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

Section 30.14 Tax Consequences. No opinion regarding the tax consequences of this Settlement Agreement to any individual Settlement Class Member is being given or will be given by the NFL Parties, Counsel for the NFL Parties, Class and Subclass Representatives, Co-Lead Class Counsel, Class Counsel, or Subclass Counsel, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement Agreement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are his or her sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member. The NFL Parties, Counsel for the NFL Parties, Co-Lead Class Counsel, Class Counsel

and Subclass Counsel will have no liability or responsibility whatsoever for any such tax consequences resulting from payments under this Settlement Agreement. To the extent required by law, the Claims Administrator will report payments made under the Settlement Agreement to the appropriate authorities.

Section 30.15 Issuance of Notices and Submission of Materials. In any instance in which this Settlement Agreement requires the issuance of any notice regarding registration, a claim or an award, unless specified otherwise in this Settlement Agreement, such notice must be issued by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose to the Settlement Class Member or NFL Parties, which shall be accompanied by an email certifying receipt; or (b) U.S. mail (or its foreign equivalent). In any instance in which this Settlement Agreement requires submission of materials by or on behalf of a Settlement Class Member or the NFL Parties, unless specified otherwise in this Settlement Agreement, such submission must be made by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose; or (b) U.S. mail (or its foreign equivalent; or (c) delivery. Written notice to the Class Representatives or Co-Lead Class Counsel must be given to: Christopher A. Seeger, Seeger Weiss LLP, 77 Water Street, New York, New York 10005; and Sol Weiss, Anapol Schwartz, 1710 Spruce Street, Philadelphia, PA 19103. Written notice to the NFL Parties or Counsel for the NFL Parties must be given to: Jeffrey Pash, Executive Vice President and General Counsel, National Football League, 345 Park Avenue, New York, New York 10154; Anastasia Danias, Senior Vice President and Chief Litigation Officer, National Football League, 345 Park Avenue, New York, New York 10154; and Brad S. Karp, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, or such other person or persons as shall be designated by the Parties.

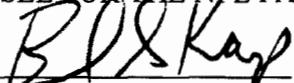
Section 30.16 Party Burden. Unless explicitly provided otherwise, whenever a showing is required to be made in this Settlement Agreement, the party seeking the relief shall bear the burden of substantiation.

Agreed to as of this 6th day of January, 2014.

NATIONAL FOOTBALL LEAGUE, NFL PROPERTIES LLC

By: 
Jeffrey Pash
NFL Executive Vice President

COUNSEL FOR THE NFL PARTIES

By: 
PAUL, WEISS, RIFKIND, WHARTON &
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Theodore V. Wells, Jr.
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LOCKS LAW FIRM
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SUBCLASS COUNSEL

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LEVIN, FISHBEIN, SEDRAN &
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Dianne M. Nast

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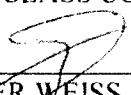
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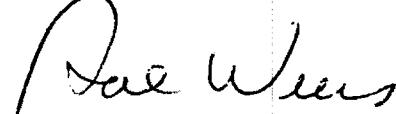
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Exhibit B-1

INJURY DEFINITIONS

DIAGNOSIS FOR BAP SUPPLEMENTAL BENEFITS

Level 1 Neurocognitive Impairment

(a) The following are the diagnostic criteria for Level 1 Neurocognitive Impairment:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a decline in cognitive function;

(ii) Evidence of moderate cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;

(iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating scale Category 0.5 (Questionable) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) Level 1 Neurocognitive Impairment, for the purposes of this Settlement Agreement, may only be diagnosed by Qualified BAP Providers during a BAP baseline assessment examination, with agreement on the diagnosis by the Qualified BAP Providers.

QUALIFYING DIAGNOSES FOR MONETARY AWARDS

1. Level 1.5 Neurocognitive Impairment

- (a) For Retired NFL Football Players diagnosed through the BAP:
- (i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function;
- (ii) Evidence of moderate to severe cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;
- (iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 1.0 (Mild) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and
- (iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.
- (b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician that the Retired NFL Football Player suffers from neurocognitive impairment consistent with the diagnostic criteria for Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia.
- (c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, that the Retired NFL Football Player suffered from neurocognitive impairment consistent with the diagnostic criteria for Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia.

2. Level 2 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function;

(ii) Evidence of severe cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;

(iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 2.0 (Moderate) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician that the Retired NFL Football Player suffers from neurocognitive impairment consistent with the diagnostic criteria for Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, that the Retired NFL Football Player suffered from neurocognitive impairment consistent with the diagnostic criteria for Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia.

3. Alzheimer's Disease

(a) For living Retired NFL Football Players, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician of the specific disease of Alzheimer's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of probable Alzheimer's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5).

(b) For Retired NFL Football Players who died prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a

physician with sufficient qualifications in the field of neurology to make such a diagnosis, that the Retired NFL Football Player suffered from Alzheimer's Disease or probable Alzheimer's Disease consistent with the definition in *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5).

4. Parkinson's Disease

(a) For living Retired NFL Football Players, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician of the specific disease of Parkinson's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or the *Diagnostic and Statistical Manual of Mental Disorders*.

(b) For Retired NFL Football Players who died prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, that the Retired NFL Football Player suffered from Parkinson's Disease.

5. Death with Chronic Traumatic Encephalopathy (CTE)

For Retired NFL Football Players who died prior to the date of the Preliminary Approval and Class Certification Order, a post-mortem diagnosis by a board-certified neuropathologist of CTE.

6. Amyotrophic Lateral Sclerosis (ALS)

(a) For living Retired NFL Football Players, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician of the specific disease of Amyotrophic Lateral Sclerosis, also known as Lou Gehrig's Disease ("ALS"), as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10).

(b) For Retired NFL Football Players who died prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, that the Retired NFL Football Player suffered from ALS.

Exhibit B-2

**BASELINE NEUROPSYCHOLOGICAL TEST BATTERY AND SPECIFIC IMPAIRMENT
CRITERIA FOR RETIRED NFL FOOTBALL PLAYERS**

Section 1. Test Battery

Estimating Premorbid Intellectual Ability	Learning and Memory (6 scores)
ACS Test of Premorbid Functioning (TOPF)	WMS-IV Logical Memory I
Complex Attention/Processing Speed (6 scores)	WMS-IV Logical Memory II
WAIS-IV Digit Span	WMS-IV Verbal Paired Associates I
WAIS-IV Arithmetic	WMS-IV Verbal Paired Associates II
WAIS-IV Letter Number Sequencing	WMS-IV Visual Reproduction I
WAIS-IV Coding	WMS-IV Visual Reproduction II
WAIS-IV Symbol Search	Language (3 scores)
WAIS-IV Cancellation	Boston Naming Test
Executive Functioning (4 scores)	Category Fluency (Animal Naming)
Verbal Fluency (FAS)	BDAE Complex Ideational Material
Trails B	Spatial-Perceptual (3 scores)
Booklet Category Test	WAIS-IV Block Design
WAIS-IV Similarities	WAIS-IV Visual Puzzles
Effort/Performance Validity (8 scores)	WAIS-IV Matrix Reasoning
<i>ACS Effort Scores</i>	Mental Health
ACS-WAIS-IV Reliable Digit Span	MMPI-2RF
ACS-WMS-IV Logical Memory Recognition	Mini International Neuropsychiatric Interview
ACS-WMS-IV Verbal Paired Associates Recognition	
ACS-WMS-IV Visual Reproduction Recognition	
ACS-Word Choice	
<i>Additional Effort Tests</i>	
Test of Memory Malingering (TOMM)	
Medical Symptom Validity Test (MSVT)	

Section 2: Evaluate Effort

The Advanced Clinical Solutions (ACS) Suboptimal Effort measures include five performance validity measures: one external (Word Choice) and four embedded (see list in Section 2). These measures are designed to identify unexpectedly low performance that might reflect deliberately poor effort. Cut-off scores are derived for each measure based on the performance of a large clinical sample that includes cases with significant cognitive impairment. Performing well below the overall clinical sample (e.g., worse than 90% of all clinical cases) suggests that the examinee's performance is atypical. Multiple atypical scores strongly suggest invalid performance. Tables are presented in the ACS manual that provide interpretive criteria for the 5 ACS Suboptimal Effort measures.

In addition to the ACS Suboptimal Effort measures described above, it is also necessary to include two additional tests designed to detect poor effort. These two free-standing tests will include the Test of Memory Malingering (TOMM) and the Medical Symptom Validity Test (MSVT).

If a Retired NFL Football Player fails any two of the seven effort tests (external, embedded, or free-standing), the examiner must assess effort and symptom validity using the method set forth in Slick et al. 1999, and revised in 2013. Using that method, examiners should determine whether any of the following factors influenced test performance.

1. Suboptimal scores on performance validity embedded indicators or tests. The cutoffs for each test should be established based on empirical findings.
2. A pattern of neuropsychological test performance that is markedly discrepant from currently accepted models of normal and abnormal central nervous system (CNS) function. The discrepancy must be consistent with an attempt to exaggerate or fabricate neuropsychological dysfunction (e.g., a patient performs in the severely impaired range on verbal attention measures but in the average range on memory testing; a patient misses items on recognition testing that were consistently provided on previous free recall trials, or misses many easy items when significantly harder items from the same test are passed).
3. Discrepancy between test data and observed behavior. Performance on two or more neuropsychological tests within a domain are discrepant with observed level of cognitive function in a way that suggests exaggeration or fabrication of dysfunction (e.g., a well-educated patient who presents with no significant visual-perceptual deficits or language disturbance in conversational speech performs in the severely impaired range on verbal fluency and confrontation naming tests).
4. Discrepancy between test data and reliable collateral reports. Performance on two or more neuropsychological tests within a domain are discrepant with day-to-day level of cognitive function described by at least one reliable collateral informant in a way that suggests exaggeration or fabrication of dysfunction (e.g., a patient handles all family finances but is unable to perform simple math problems in testing).

5. Discrepancy between test data and documented background history. Improbably poor performance on two or more standardized tests of cognitive function within a specific domain (e.g., memory) that is inconsistent with documented neurological or psychiatric history.
6. Self-reported history is discrepant with documented history. Reported history is markedly discrepant with documented medical or psychosocial history and suggests attempts to exaggerate deficits.
7. Self-reported symptoms are discrepant with known patterns of brain functioning. Reported or endorsed symptoms are improbable in number, pattern, or severity; or markedly inconsistent with expectations for the type or severity of documented medical problems.
8. Self-reported symptoms are discrepant with behavioral observations. Reported symptoms are markedly inconsistent with observed behavior (e.g., a patient complains of severe episodic memory deficits yet has little difficulty remembering names, events, or appointments; a patient complains of severe cognitive deficits yet has little difficulty driving independently and arrives on time for an appointment in an unfamiliar area; a patient complains of severely slowed mentation and concentration problems yet easily follows complex conversation).
9. Self-reported symptoms are discrepant with information obtained from collateral informants. Reported symptoms, history, or observed behavior is inconsistent with information obtained from other informants judged to be adequately reliable. The discrepancy must be consistent with an attempt to exaggerate deficits (e.g., a patient reports severe memory impairment and/or behaves as if severely memory-impaired, but his spouse reports that the patient has minimal memory dysfunction at home).

Notwithstanding a practitioner's determination of sufficient effort in accordance with the foregoing factors, a Retired NFL Football Player's failure on two or more effort tests may result in the Retired NFL Football Player's test results being subjected to independent review, or result in a need for supplemental testing of the Retired NFL Football Player.

Note: Additional information relating to the evaluation of effort and performance validity will be provided in a clinician's interpretation guide.

Section 3. Estimate Premorbid Intellectual Ability

Test	Ability
Test of Premorbid Functioning (TOPF)	Reading
	Reading + Demographic Variables

The Test of Premorbid Functioning (TOPF) provides three models for predicting premorbid functioning: (a) demographics only, (b) TOPF only, and (c) combined demographics and TOPF prediction equations. For each model using demographic data, a simple and complex prediction equation can be selected. In the simple model, only sex, race/ethnicity, and education, are used in predicting premorbid ability. In the complex model, developmental, personal, and more specific demographic data is incorporated into the equations. The clinician should select a model based on the patient's background and his or her current level of reading or language impairment.

Note: It is necessary to estimate premorbid intellectual functioning in order to use the criteria for impairment set out in this document. Estimated premorbid intellectual ability will be assessed and classified as:

- Below Average (estimated IQ below 90);
- Average (estimated IQ between 90 and 109);
- Above Average (estimated IQ above 110).

Section 4. Neuropsychological Test Score Criteria by Domain of Cognitive Functioning

There are 5 domains of cognitive functioning. In each domain, there are several tests that contribute 3, 4, or 6 demographically-adjusted test scores for consideration. Test selection in the domains was based on the availability of demographically-adjusted normative data for Caucasians and African Americans. These domains and scores are set out below.

The basic principle for defining impairment on testing is that there must be a pattern of performance that is approximately 1.5 standard deviations (for Level 1 Impairment), 1.7-1.8 standard deviations (for Level 1.5 Impairment) or 2 standard deviations (for Level 2 Impairment) below the person's expected level of premorbid functioning. Therefore, it is necessary to have more than one low test score in each domain. A user manual will be provided to neuropsychologists setting out the cutoff scores, criteria for identifying impairment in each cognitive domain, and statistical and normative data to support the impairment criteria.

Domain/Test	Ability
Complex Attention/Speed of Processing (6 Scores)	
Digit Span	Attention & Working Memory
Arithmetic	Mental Arithmetic
Letter Number Sequencing	Attention & Working Memory
Coding	Visual-Processing & Clerical Speed
Symbol Search	Visual-Scanning & Processing Speed
Cancellation	Visual-Scanning Speed
Executive Functioning (4 scores)	
Similarities	Verbal Reasoning
Verbal Fluency (FAS)	Phonemic Verbal Fluency
Trails B	Complex Sequencing
Booklet Category Test	Conceptual Reasoning
Learning and Memory (6 scores)	
Logical Memory I	Immediate Memory for Stories
Logical Memory II	Delayed Memory for Stories
Verbal Paired Associates I	Learning Word Pairs
Verbal Paired Associates II	Delayed Memory for Word Pairs
Visual Reproduction I	Immediate Memory for Designs
Visual Reproduction II	Delayed Memory for Designs
Language	
Boston Naming Test	Confrontation Naming
BDAE Complex Ideational Material	Language Comprehension
Category Fluency	Category (Semantic) Fluency
Visual-Perceptual	
Block Design	Spatial Skills & Problem Solving
Visual Puzzles	Visual Perceptual Reasoning
Matrix Reasoning	Visual Perceptual Reasoning

Impairment Criteria: *Below Average Estimated Intellectual Functioning (A1 – E1)*

A1. Complex Attention (6 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 35
2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 2 scores below a T score of 30
3. Level 2 Impairment: 3 or more scores below a T score of 30

B1. Executive Function (4 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

C1. Learning and Memory (6 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 35
2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 2 scores below a T score of 30
3. Level 2 Impairment: 3 or more scores below a T score of 30

D1. Language (3 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 37
2. Level 1.5 Impairment: meet for Level 1 and 2 scores below a T score of 35
3. Level 2 Impairment: 3 or more scores below a T score of 35

E1. Visual-Perceptual (3 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 37
2. Level 1.5 Impairment: meet for Level 1 and 2 scores below a T score of 35
3. Level 2 Impairment: 3 or more scores below a T score of 35

Impairment Criteria: Average Estimated Intellectual Functioning (A2 – E2)

A2. Complex Attention (6 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

B2. Executive Function (4 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

C2. Learning and Memory (6 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 35
2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

D2. Language (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 37
2. Level 1.5 Impairment: 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 35
3. Level 2 Impairment: 2 or more scores below a T score of 35

E2. Visual-Perceptual (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 37
2. Level 1.5 Impairment: 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 35
3. Level 2 Impairment: 2 or more scores below a T score of 35

Impairment Criteria: *Above Average* Estimated Intellectual Functioning (A3 – E3)

A3. Complex Attention (6 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37
3. Level 2 Impairment: 3 or more scores below a T score of 35

B3. Executive Function (4 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 37
2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

C3. Learning and Memory (6 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37
3. Level 2 Impairment: 3 or more scores below a T score of 35

D3. Language (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 40
2. Level 1.5 Impairment: 3 scores below at T score of 40; or meet for Level 1 and 1 score below a T score of 37
3. Level 2 Impairment: 2 or more scores below a T score of 37

E3. Visual-Perceptual (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 40
2. Level 1.5 Impairment: 3 scores below at T score of 40; or meet for Level 1 and 1 score below a T score of 37
3. Level 2 Impairment: 2 or more scores below a T score of 37

Section 5: Mental Health Assessment

Test	Symptoms/Functioning	Assessment
MMPI-2RF	Mental Health Assessment	Evaluation of Validity Scales and Configurations; T-Scores for Symptom Domains
Mini International Neuropsychiatric Interview (M.I.N.I. Version 5.0.0)	Semi-structured Psychiatric Interview	Scale Criteria for Various Psychiatric Diagnoses

Exhibit B-3

**MONETARY AWARD GRID
(BY AGE AT TIME OF QUALIFYING DIAGNOSIS)**

Age Group	ALS	Death w/CTE	Parkinson's	Alzheimer's	Level 2	Level 1.5
Under 45	\$5,000,000	\$4,000,000	\$3,500,000	\$3,500,000	\$3,000,000	\$1,500,000
45-49	\$4,500,000	\$3,200,000	\$2,470,000	\$2,300,000	\$1,900,000	\$950,000
50-54	\$4,000,000	\$2,300,000	\$1,900,000	\$1,600,000	\$1,200,000	\$600,000
55-59	\$3,500,000	\$1,400,000	\$1,300,000	\$1,150,000	\$950,000	\$475,000
60-64	\$3,000,000	\$1,200,000	\$1,000,000	\$950,000	\$580,000	\$290,000
65-69	\$2,500,000	\$980,000	\$760,000	\$620,000	\$380,000	\$190,000
70-74	\$1,750,000	\$600,000	\$475,000	\$380,000	\$210,000	\$105,000
75-79	\$1,000,000	\$160,000	\$145,000	\$130,000	\$80,000	\$40,000
80+	\$300,000	\$50,000	\$50,000	\$50,000	\$50,000	\$25,000

The above Monetary Award levels are the average base Monetary Awards for each of the Qualifying Diagnoses for particular age groups, except for the “Under 45” and “80+” rows, which list the maximum and minimum base Monetary Awards, respectively, for those age groups. A Settlement Class Member’s actual base Monetary Award for ages 45-79 may be higher or lower than the average base Monetary Award listed for the Retired NFL Football Player’s age group, depending on the Retired NFL Football Player’s actual age at the time of Qualifying Diagnosis.

Base Monetary Awards are subject to: (a) upward adjustment for inflation, as provided in Section 6.7 of the Settlement Agreement; and (b) downward adjustment based on Offsets (Number of Eligible Seasons, medically diagnosed Stroke occurring prior to a Qualifying Diagnosis, medically diagnosed Traumatic Brain Injury occurring prior to a Qualifying Diagnosis, and non-participation in the BAP by a Retired NFL Football Player in Subclass 1, under the circumstances described in detail in the Settlement Agreement), as provided in Section 6.5(b) of the Settlement Agreement.

Exhibit B-4

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	:	No. 2:12-md-02323-AB
	:	MDL No. 2323
<hr/>		
Kevin Turner and Shawn Wooden, <i>on behalf of themselves and others similarly situated,</i> Plaintiffs,	:	CIVIL ACTION NO: <u>14-29</u>
	:	
v.	:	
National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	:	
<hr/>		
THIS DOCUMENT RELATES TO:	:	
ALL ACTIONS	:	
<hr/>		

[PROPOSED] FINAL ORDER AND JUDGMENT

On January 6, 2014, Plaintiffs in the above-referenced action (“Action”) filed a Class Action Complaint and on January 6, 2014 a Settlement Agreement was entered into by and among defendants the National Football League (“NFL”) and NFL Properties LLC (“NFL Properties”) (collectively, “NFL Parties”), by and through their attorneys, and the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, by and through Co-Lead Class Counsel, Class Counsel and Subclass Counsel.

On [DATE], the Court entered a Preliminary Approval and Conditional Class Certification Order (“Preliminary Order”) that, among other things: (i) preliminarily approved

the Settlement Agreement; (ii) for purposes of the Settlement Agreement only, conditionally certified the Settlement Class and Subclasses; (iii) appointed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (iv) approved the form and method of notice of the Settlement Agreement to the Settlement Class and Subclasses and directed that appropriate notice of the Settlement Agreement be disseminated; (v) scheduled a Fairness Hearing for final approval of the Settlement Agreement; and (vi) stayed this matter and all Related Lawsuits in this Court and enjoined proposed Settlement Class Members from pursuing Related Lawsuits.

In its Preliminary Order, pursuant to Fed. R. Civ. P. 23(b)(3), the Court defined and certified the Settlement Class as follows:

- (i) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club (“Retired NFL Football Players”); and
- (ii) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and
- (iii) Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player (“Derivative Claimants”).

In its Preliminary Order, pursuant to Fed. R. Civ. P. 23(b)(3), the Court defined and certified the Subclasses as follows:

- (i) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

- (ii) "Subclass 2" means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

Notice was provided to Settlement Class Members pursuant to the Settlement Class Notice Plan approved in the Preliminary Order. (See Settlement Class Notice Plan attached to the Declaration of Katherine Kinsella, Class Notice Agent.) Counsel for the NFL Parties, Co-Lead Class Counsel, Class Counsel and Subclass Counsel worked together with the Settlement Class Notice Agent to fashion a Settlement Class Notice Plan that was tailored to the specific claims and Settlement Class Members of this case. Settlement Class Notice was disseminated to all known Settlement Class Members by U.S. first-class mail by [INSERT DATE]. In addition, a Summary Notice was published in accordance with the Settlement Class Notice Plan and Co-Lead Class Counsel caused to be established an automated telephone system that uses a toll-free number to respond to questions from Settlement Class Members. Co-Lead Class Counsel also caused to be established and maintained a public website that provided information about the proposed Class Action Settlement, including the Settlement Agreement, frequently asked questions, the Preliminary Order, and relevant dates for objecting to the Class Action Settlement, opting out of the Settlement Class, and the date and place of the Fairness Hearing. The website allowed Settlement Class Members to identify themselves so that Settlement Class Notice could be mailed to them. Co-Lead Class Counsel, Class Counsel and Subclass Counsel have established that the Settlement Class Notice Plan was implemented.

[] Settlement Class Members have chosen to be excluded from the Settlement Class by timely filing written requests for exclusion (“Opt Outs”). The Opt Outs are listed at the end of this Order in Exhibit [].

[] Settlement Class Members submitted objections to the Class Action Settlement under the process set by the Preliminary Order.

On [DATE], at [TIME], the Court held the Fairness Hearing to consider whether the Class Action Settlement was fair, reasonable, adequate, and in the best interests of the Settlement Class and Subclasses. At the Fairness Hearing, [NAMES] appeared on behalf of the Class Representatives, Subclass Representatives and Settlement Class Members, and [NAMES] appeared on behalf of the NFL Parties. Additionally, the following individuals also appeared at the Fairness Hearing having timely submitted a Notice of Intention to Appear. [INSERT LIST]

The Court, having heard arguments of counsel for the Parties and of the persons who appeared at the Fairness Hearing [REFERENCE OBJECTIONS, if any], having reviewed all materials submitted, having considered all of the files, records, and proceedings in this Action, and being otherwise fully advised,

HEREBY ORDERS THAT:

1. Jurisdiction. This Court retains continuing and exclusive jurisdiction over the Action, Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, Appeals Judge Panel, Appeals Advisory Panel, Trustee and Settlement Agreement, including its enforcement and interpretation, and all other matters relating to it. This Court also retains continuing jurisdiction over the “qualified settlement funds,” as defined under § 1.468B-1 of the Treasury Regulations

promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986 as amended, created under the Settlement Agreement.

2. Incorporation of Settlement Documents. This Order and Judgment incorporates and makes a part hereof: (a) the Settlement Agreement and exhibits filed with the Court on [DATE], including definitions of the terms used therein and (b) the Settlement Class Notice Plan and the Summary Notice, both of which were filed with the Court on [DATE]. Unless otherwise defined in this Final Order and Judgment, the capitalized terms herein shall have the same meaning as they have in the *In re: National Football League Players' Concussion Injury Litigation*, MDL 2323, Class Action Settlement Agreement dated [DATE].

3. Confirmation of Settlement Class. The provisions of the Preliminary Order that conditionally certified the Settlement Class and Subclasses should be, and hereby are, confirmed in all respects as a final class certification order under Fed. R. Civ. P. 23 for the purposes of implementing the Settlement Agreement. As set forth in the Preliminary Order, the Court finds that, for purposes of effectuating the Settlement Agreement: (a) the Settlement Class Members are so numerous that their joinder is impracticable; (b) there are questions of law and fact common to the Class and Subclasses; (c) the claims of the Class Representatives and Subclass Representatives are typical of the Settlement Class Members and the respective Subclass Members; (d) the Class Representatives and Subclass Representatives and Co-Lead Class Counsel, Class Counsel and Subclass Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and (e) the questions of law or fact common to the Class and Subclasses predominate over any questions affecting only individual Settlement Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Settlement Notice. The Court finds that pursuant to Federal Rule of Civil Procedure 23(c)(2)(B) the dissemination of the Settlement Class Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Preliminary Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members (a) of the effect of the Settlement Agreement (including the Releases provided for therein), (b) that the NFL Parties agreed not to object to a petition for class attorneys' fees and reasonable incurred costs up to \$112.5 million, and that at a later date, to be determined by the Court, Co-Lead Class Counsel, Class Counsel and Subclass Counsel may petition the Court for an award of attorneys' fees and reasonable incurred costs, and Settlement Class Members may comment on or object to the petition, (c) of their right to opt out or object to any aspect of the Settlement Agreement, (d) of their right to revoke an Opt Out prior to the Final Approval Date, and (e) of their right to appear at the Fairness Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement Agreement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause) and other applicable laws and rules. The Notice given by the NFL Parties to state and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

5. Confirmation of Appointment of Class and Subclass Representatives. As set forth in the Preliminary Order, the Court confirms the appointment of Shawn Wooden and Kevin Turner as Class Representatives and Shawn Wooden as Subclass 1 Representative and Kevin Turner as Subclass 2 Representative.

6. Confirmation of Appointment of Co-Lead Class Counsel, Class Counsel and Subclass Counsel. Pursuant to Fed. R. Civ. P. 23(g), the Court confirms the appointment of Christopher A. Seeger and Sol Weiss as Co-Lead Class Counsel, Steven C. Marks and Gene Locks as Class Counsel and Arnold Levin and Dianne M. Nast as Subclass Counsel. Co-Lead Class Counsel, Class Counsel and Subclass Counsel are familiar with the claims in this case and have done work investigating the claims. They have consulted with other counsel in the case and have experience in handling class actions and other complex litigation. They have knowledge of the applicable laws and the resources to commit to the representation of Settlement Class Members and the Settlement Class and Subclasses.

7. Approval of Class Action Settlement. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement Agreement in its entirety (including, without limitation, the NFL Parties' payment obligations, as set forth in Article XXIII of the Settlement Agreement, the Releases provided for therein, and the dismissal with prejudice of claims against the NFL Parties) and finds that the Settlement Agreement is fair, reasonable and adequate. The Court also finds that the Settlement Agreement is fair, reasonable and adequate, and in the best interests of, the Class and Subclass Representatives and all Settlement Class Members, including, without limitation, the members of the Subclasses.

The Parties are ordered to implement, perform and consummate each of the obligations set forth in the Settlement Agreement in accordance with its terms and provisions. All objections to the Settlement Agreement are found to be without merit and are overruled.

8. Dismissal of Class Action Complaint. The Class Action Complaint is hereby dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that Co-Lead Class Counsel's, Class Counsel's and Subclass Counsel's motion for an award of class attorneys' fees and reasonable incurred costs, as contemplated by the Parties in Section 21.1 of the Settlement Agreement, will be made at an appropriate time to be determined by the Court.

9. Dismissal of Released Claims. As set forth in Article XVIII of the Settlement Agreement, the Settlement Class, the Class and Subclass Representatives and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), have waived and released, forever discharged and held harmless the Released Parties, and each of them:

- a. Of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits ("Claims"), including, without limitation, the Claims identified in Section 18.1(a)(i)-(viii) of the Settlement Agreement.

- b. Of and from any and all Claims, including unknown Claims, arising from, relating to, or resulting from the reporting, transmittal of information, or communications between or among the NFL Parties, Counsel for the NFL Parties, the Special Master, Claims Administrator, Lien Resolution Administrator, any Governmental Payor and/or Medicare Part C or Part D Program sponsor, regarding any claim for benefits under this Settlement Agreement, including any consequences in the event that this Settlement Agreement impacts, limits, or precludes any Settlement Class Member's right to benefits under Social Security or from any Governmental Payor or Medicare Part C or Part D Program sponsor.
- c. Of and from any and all Claims, including unknown Claims, pursuant to the MSP Laws, or other similar causes of action, arising from, relating to, or resulting from the failure or alleged failure of any of the Released Parties to provide for a primary payment or appropriate reimbursement to a Governmental Payor or Medicare Part C or Part D Program sponsor with a Lien in connection with claims for medical items, services, and/or prescription drugs provided in connection with compensation or benefits claimed or received by a Settlement Class Member pursuant to this Settlement Agreement.
- d. And the Special Master, BAP Administrator, Claims Administrator, and their respective officers, directors, and employees, of and from any and all Claims, including unknown Claims, arising from, relating to, or resulting from their participation, if any, in the BAP, including, but not limited to, Claims for negligence, medical malpractice, wrongful or delayed diagnosis, personal injury, bodily injury (including disease, trauma, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life), or death arising from, relating to, or resulting from such participation.

Accordingly, the Court hereby orders the dismissal with prejudice of all Released Claims by the Releasors against the Released Parties pending in the Court and without further costs, including claims for interest, penalties, costs and attorneys' fees. All Releasors with Released Claims pending in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, against the Released Parties are ordered to promptly dismiss with prejudice all such Released Claims, and without further costs, including

claims for interest, penalties, costs, and attorneys' fees. This Settlement Agreement will be the exclusive remedy for any and all Released Claims by or on behalf of any and all Releasors against any of the Released Parties, and no Releasor shall recover, directly or indirectly, any sums from any Released Parties for Released Claims other than those received for Released Claims under the terms of the Settlement Agreement, if any. However, nothing contained in the Settlement Agreement, including the Release and Covenant Not to Sue provisions in Article XVIII, affects the rights of Settlement Class Members to pursue claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

10. Dismissal of Related Lawsuits. All Related Lawsuits pending in the Court are hereby dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees. All Releasors with Related Lawsuits pending in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, are ordered to promptly dismiss with prejudice such Related Lawsuits, and without further costs, including claims for interest, penalties, costs, and attorneys' fees.

11. Covenant Not to Sue. Consistent with Section 18.4 of the Settlement Agreement, the Class and Subclass Representatives, each Settlement Class Member, and the Settlement Class, on behalf of the Releasors, and each of them, are hereby barred, enjoined and restrained from, at any time, continuing to prosecute, commencing, filing, initiating, instituting, causing to be instituted, assisting in instituting, or permitting to be instituted on their, his, her, or its behalf, or on behalf of any other individual or entity, any proceeding: (i) alleging or asserting any of his or her respective Released Claims against the Released Parties in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, including, without limitation, the Claims set forth in Article XVIII of the Settlement Agreement; or (ii) challenging

the validity of the Releases. To the extent any such proceeding exists in any court, tribunal or other forum as of the Effective Date, the Releasors are ordered to withdraw and seek dismissal with prejudice of such proceeding forthwith.

12. Complete Bar Order and Judgment Reduction. It is ordered that any person or entity, other than Riddell (as defined in the Settlement Agreement), that becomes liable to any Releasor, or to any other alleged tortfeasor, co-tortfeasor, co-conspirator or co-obligor, by reason of judgment or settlement, for any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any facts in connection with this Action or any Related Lawsuit (collectively, the "Non-Settling Defendants"), are hereby permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against the Released Parties that seeks to recover from the Released Parties any part of any judgment entered against the Non-Settling Defendants and/or any settlement reached with any of the Non-Settling Defendants, in connection with any claims that are or could have been asserted against the Non-Settling Defendants in this Action or in any Related Lawsuit or that arise out of or relate to any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any facts in connection with this Action or any Related Lawsuit, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any Related Lawsuit, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

It is further ordered that the Released Parties are hereby permanently BARRED, ENJOINED AND RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against any of the Non-Settling Defendants that seeks to recover any part of the NFL Parties' payment obligations as set forth in Article XXIII of the Settlement Agreement, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any Related Lawsuit, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

It is further ordered that any judgment or award obtained by the Releasors against any such Non-Settling Defendant shall be reduced by the amount or percentage, if any, necessary under applicable law to relieve the Released Parties of all liability to such Non-Settling Defendants on claims barred pursuant to this Paragraph 12. Such judgment reduction, partial or complete release, settlement credit, relief, or setoff, if any, shall be in an amount or percentage sufficient under applicable law to compensate such Non-Settling Defendants for the loss of any such barred claims pursuant to this Paragraph 12 against the Released Parties.

13. No Release for Insurance Coverage. Notwithstanding anything to the contrary in this Final Order and Judgment, this Final Order and Judgment and the Settlement Agreement are not intended to and do not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(aaaa)(i)-(ii) of the Settlement Agreement.

14. Riddell. As set forth in the Settlement Agreement, it is hereby ordered that, with respect to any litigation by the Releasors against Riddell, if a verdict in a Releasor's favor results in verdict or judgment for contribution or indemnity against any of the Released Parties, the Releasors shall not enforce their right to collect this verdict or judgment to the extent that such enforcement creates liability against such Released Parties. In such event, the Releasors shall reduce their claim or agree to a judgment reduction or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability against the Released Parties or any Other Party claiming contribution or indemnity.

15. Confirmation of Administrative Appointments. As set forth in the Preliminary Order, the Court confirms the appointment of The Garretson Resolution Group, Inc. as the BAP Administrator, BrownGreer PLC as the Claims Administrator, The Garretson Resolution Group, Inc. as the Liens Resolution Administrator and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed. Pursuant to Federal Rule of Civil Procedure 53 and the inherent authority of the Court, the Court [further extends the appointment of Mr. Perry Golkin as Special Master first made in this Court's Order Appointing Special Master, dated December 16, 2013, to perform the duties of the Special Master as set forth in the Settlement Agreement for a five-year term] [appoints _____ as Special Master to perform the duties of the Special Master as set forth in the Settlement Agreement for a five-year term].

16. No Admission. This Final Order and Judgment, the Settlement Agreement, and the documents relating thereto, and any actions taken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of the Settlement Agreement: (a) do not and shall not, in any event, constitute, or be construed as, an admission of any liability or

wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member in this or any other action or proceeding; and (b) shall not, in any way, be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member, of any claims, causes of action, or remedies. This Paragraph shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

17. Modification of the Settlement Agreement. Without further approval from the Court, Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties, on behalf of all Parties, are hereby authorized to agree to and adopt, by the express written consent of each Party, such amendments and modifications of the Settlement Agreement, or any exhibits attached thereto, to effectuate the Settlement Agreement that: (i) are not

materially inconsistent with this Final Order and Judgment; and (ii) do not materially limit the rights of Class Members in connection with the Class Action Settlement. Without further order of the Court, Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties, on behalf of all Parties, may agree, by the express written consent of each Party, to reasonable extensions of time to carry out any provisions of the Settlement Agreement.

18. Binding Effect. The terms of the Settlement Agreement and of this Final Order and Judgment shall be forever binding on the Parties (regardless of whether or not any individual Settlement Class Member receives payment of a Monetary Award or Derivative Claimant Award or participates in a BAP baseline assessment examination), as well as their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns. The Opt Outs listed in Exhibit [] hereto are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Settlement Agreement or this Final Order and Judgment.

19. Termination. If the Settlement Agreement is terminated as provided in Article XVI of the Settlement Agreement, then this Final Order and Judgment (and any orders of the Court relating to the Settlement Agreement) shall be null and void and be of no further force or effect, except as otherwise provided by the Settlement Agreement, and any unspent and uncommitted monies in the Funds will revert to, and shall be paid to, the NFL Parties within ten (10) days.

20. Entry of Final Judgment. There is no just reason to delay the entry of this Final Order and Judgment as a final judgment in this Action. Accordingly, the Clerk of Court is hereby directed, in accordance with this Final Order and Judgment and pursuant to Fed. R. Civ. P. 54, to: (i) enter final judgment dismissing with prejudice this Action and any Related Lawsuits

in this Court in which Released Parties (or any of them) are the only defendants, and (ii) enter final judgment dismissing with prejudice all Released Claims asserted against Released Parties (or any of them) in any other Related Lawsuits in this Court in which there are named defendants other than Released Parties.

SO ORDERED this _____ day of _____, 2014.

Anita B. Brody
United States District Court Judge

Exhibit B-5

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

\$760 Million NFL Concussion Litigation Settlement

Retired NFL Football Players May Be Eligible for Money and Medical Benefits

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The National Football League (“NFL”) and NFL Properties LLC (collectively, “NFL Parties”) have agreed to a \$760 million Settlement of a class action lawsuit seeking medical monitoring and compensation for brain injuries allegedly caused by head impacts experienced in NFL football. The NFL Parties deny that they did anything wrong.
- The Settlement includes all retired players of the NFL, the American Football League (“AFL”) that merged with the NFL, the World League of American Football, NFL Europe League, and NFL Europa League, as well as immediate family members of retired players and legal representatives of incapacitated, incompetent or deceased retired players.
- The Settlement will provide eligible retired players with:
 - Baseline neuropsychological and neurological exams to determine if retired players are: a) currently suffering from any neurocognitive impairment, including impairment serious enough for compensation, and b) eligible for additional testing and/or treatment (\$75 million);
 - Monetary awards for diagnoses of ALS (Lou Gehrig’s disease), Parkinson’s Disease, Alzheimer’s Disease, early and moderate Dementia and certain cases of chronic traumatic encephalopathy (CTE) (a neuropathological finding) diagnosed after death (\$675 million); and
 - Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives (\$10 million).
- To get money, proof that injuries were caused by playing NFL football is not required.
- **Settlement Class Members must register to get benefits. Sign up at the website for notification of the registration date.**
- Your legal rights are affected even if you do nothing. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
STAY IN THE SETTLEMENT CLASS	You do not need to do anything to be included in the Settlement Class. However, once the Court approves the Settlement, you will be bound by the terms and releases contained in the Settlement. There will be later notice to explain when and how to register for Settlement benefits (<i>see Question 26</i>).
ASK TO BE EXCLUDED	You will get no benefits from the Settlement if you exclude yourself (“opt-out”) from the Settlement. Excluding yourself is the only option that allows you to participate in any other lawsuit against the NFL Parties about the claims in this case (<i>see Question 30</i>).
OBJECT	Write to the Court if you do not like the Settlement (<i>see Question 35</i>). Ask to speak in Court about the fairness of the Settlement at the final approval hearing (<i>see Question 39</i>).

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- The Court in charge of this case still has to decide whether to approve the Settlement.
- **This Notice is only a summary of the Settlement Agreement and your rights. You are encouraged to carefully review the complete Settlement Agreement at www.NFLConcussionSettlement.com.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

What This Notice Contains

CHAPTER 1: INTRODUCTION

BASIC INFORMATION.....	Page 5
1. Why is this Notice being provided?	
2. What is the litigation about?	
3. What is a class action?	
4. Why is there a Settlement?	
5. What are the benefits of the Settlement?	

WHO IS PART OF THE SETTLEMENT?	Page 7
---	---------------

6. Who is included in the Settlement Class?
7. What players are not included in the Settlement Class?
8. What if I am not sure whether I am included in the Settlement Class?
9. What are the different levels of neurocognitive impairment?
10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?

CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM.....	Page 9
---	---------------

11. What is the Baseline Assessment Program (“BAP”)?
12. Why should I get a BAP baseline examination?
13. How do I schedule a baseline assessment examination and where can I get it done?

MONETARY AWARDS.....	Page 10
-----------------------------	----------------

14. What diagnoses qualify for monetary awards?
15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?
16. How much money will I receive?
17. How does the age of the retired player at the time of first diagnosis affect his monetary award?
18. How does the number of seasons a retired player played affect his monetary award?
19. How do prior strokes or brain injuries of a retired player affect his monetary award?
20. How is a retired player’s monetary award affected if he does not participate in the BAP program?
21. Can I receive a monetary award even though the retired player is dead?
22. Will this Settlement affect my participation in NFL or NFLPA related benefits programs?
23. Will this Settlement prevent me from bringing workers’ compensation claims?

EDUCATION FUND.....	Page 14
----------------------------	----------------

24. What type of education programs are supported by the Settlement?

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT.....	Page 14
---	----------------

25. What am I giving up to stay in the Settlement Class?

HOW TO GET BENEFITS.....	Page 15
---------------------------------	----------------

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

26. How do I get Settlement benefits?
27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?
28. Can I re-apply for compensation if my claim is denied?
29. Can I appeal the determination of my monetary award claim?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....Page 15

30. How do I get out of the Settlement?
31. If I do not exclude myself, can I sue the NFL Parties for the same thing later?
32. If I exclude myself, can I still get benefits from this Settlement?

THE LAWYERS REPRESENTING YOU.....Page 16

33. Do I have a lawyer in the case?
34. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....Page 17

35. How do I tell the Court if I do not like the Settlement?
36. What is the difference between objecting to the Settlement and excluding myself?

THE COURT'S FAIRNESS HEARING.....Page 18

37. When and where will the Court decide whether to approve the Settlement?
38. Do I have to attend the hearing?
39. May I speak at the hearing?

GETTING MORE INFORMATION.....Page 19

40. How do I get more information?

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 1: INTRODUCTION

BASIC INFORMATION

1. Why is this Notice being provided?

The Court in charge of this case authorized this Notice because you have a right to know about the proposed Settlement of this lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This Notice summarizes the Settlement and explains your legal rights and options.

Judge Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania is overseeing this case. The case is known as *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323. The people who sued are called the "Plaintiffs." The National Football League and NFL Properties LLC are called the "NFL Defendants."

The Settlement may affect your rights if you are: (a) a retired player of the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League, (b) an authorized representative of a deceased or legally incapacitated or incompetent retired player of those leagues, or (c) an individual with a close legal relationship with a retired player of those leagues, such as a spouse, parent or child.

2. What is the litigation about?

The Plaintiffs claim that retired players experienced head trauma during their NFL football playing careers that resulted in brain injuries, which have caused or may cause them long-term neurological problems. The Plaintiffs accuse the NFL Parties of being aware of the evidence and the risks associated with repetitive traumatic brain injuries but failing to warn and protect the players against the long-term risks, and ignoring and concealing this information from the players. The NFL Parties deny the claims in the litigation.

3. What is a class action?

In a class action, one or more people, the named plaintiffs (who are also called proposed "class representatives") sue on behalf of themselves and other people with similar claims. All of these people together are the proposed "class" or "class members." When a class action is settled, one court resolves the issues for all class members (in the settlement context, "settlement class members"), except for those who exclude themselves from the settlement. In this case, the proposed class representatives are Kevin Turner and Shawn Wooden. Excluding yourself means that you will not receive any benefits from the Settlement. The process for excluding yourself is described in Question 30 of this Notice.

4. Why is there a Settlement?

After extensive settlement negotiations mediated by retired United States District Court Judge Layn Phillips, the Plaintiffs and the NFL Parties agreed to the Settlement.

A settlement is an agreement between a plaintiff and a defendant to resolve a lawsuit. Settlements conclude litigation without the court or a jury ruling in favor of the plaintiff or the defendant. A settlement allows the parties to avoid the cost and risk of a trial, as well as the delays of litigation.

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If the Court approves this Settlement, the claims of all persons affected (*see* Question 6) and the litigation between these persons and the NFL Parties are over. The persons affected by the Settlement are eligible for the benefits summarized in this Notice and the NFL Parties will no longer be legally responsible to defend against the claims made in this litigation.

The Court has not and will not decide in favor of the retired players or the other persons affected by the Settlement or the NFL Parties, and by reviewing this Settlement the Court is not making and will not make any findings that any law was broken or that the NFL Parties did anything wrong.

The proposed Class Representatives and their lawyers (“Co-Lead Class Counsel,” “Class Counsel,” and “Subclass Counsel,” *see* Question 33) believe that the proposed Settlement is best for everyone who is affected. The factors that Co-Lead Class Counsel, Class Counsel, and Subclass Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal issues that are yet to be determined by the Court. Co-Lead Class Counsel, Class Counsel and Subclass Counsel balanced these and other substantial risks in determining that the Settlement is fair, reasonable and adequate in light of all circumstances and in the best interests of the Settlement Class Members.

The Settlement Agreement is available at www.NFLConcussionSettlement.com.

5. What are the benefits of the Settlement?

Under the Settlement, the NFL Parties will pay \$760 million to fund:

- Baseline neuropsychological and neurological examinations for eligible retired players, and additional medical testing, counseling and/or treatment if they are diagnosed with moderate cognitive impairment during the baseline examinations (up to \$75 million, “Baseline Assessment Program”) (*see* Questions 11-13);
- Monetary awards for diagnoses of ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) and Death with CTE prior to [Date of Preliminary Approval Order] (\$675 million, “Monetary Award Fund”) (*see* Questions 14-21); and
- Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives. (\$10 million) (*see* Question 24).

In addition, the NFL Parties will pay the cost of notice (up to \$4 million) and half of the compensation for a Special Master to assist the Court in overseeing aspects of the Settlement, for the first 5 years of the Settlement. The Court may extend the term for the Special Master. Other administrative costs and expenses will be paid out of the Monetary Award Fund, except for Baseline Assessment Program costs and expenses, which will be paid out of the Baseline Assessment Program Fund.

In the event the Monetary Award Fund is insufficient to pay all approved monetary claims, the NFL Parties have agreed to contribute up to an additional \$37.5 million, subject to Court approval. Based on extensive consultation with economic and medical experts, Co-Lead Class Counsel, Class Counsel, and Subclass Counsel believe the funding will be sufficient to pay all eligible monetary claims.

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The details of the Settlement benefits are in the Settlement Agreement, which is available at www.NFLConcussionSettlement.com.

Note: The Baseline Assessment Program and Monetary Award Fund are completely independent of the NFL Parties and any benefit programs that have been created between the NFL and the NFL Players Association. The NFL Parties are not involved in determining the validity of claims.

WHO IS PART OF THE SETTLEMENT?

You need to decide whether you are included in the Settlement.

6. Who is included in the Settlement Class?

This Settlement Class includes three types of people:

Retired NFL Football Players: Prior to [Date of Preliminary Approval Order], you (1) have retired, formally or informally, from playing professional football with the NFL or any Member Club, including AFL, World League of American Football, NFL Europe League, and NFL Europa League players, or (2) were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and no longer are under contract to a Member Club and are not seeking active employment as a player with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

Representative Claimants: An authorized representative, ordered by a court or other official of competent jurisdiction under applicable state law, of a deceased or legally incapacitated or incompetent Retired NFL Football Player.

Derivative Claimants: A spouse, parent, dependent child, or any other person who properly under applicable state law asserts the right to sue independently or derivatively by reason of his or her relationship with a living or deceased Retired NFL Football Player. (For example, a spouse asserting the right to sue due to the injury of a husband who is a Retired NFL Football Player.)

The Settlement recognizes two separate groups (“Subclasses”) of Settlement Class Members based on the Retired NFL Football Player’s injury status as of [Date of Preliminary Approval Order]:

- **Subclass 1** includes Retired NFL Football Players who were not diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) or Death with CTE prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants.
- **Subclass 2** includes:
 - (a) Retired NFL Football Players who were diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants; and

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- (b) Representative Claimants of deceased Retired NFL Football Players who were diagnosed with ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to death or who died prior to [Date of Preliminary Approval Order] and received a diagnosis of Death with CTE.

7. What players are included in the Settlement Class?

The Settlement Class does not include: (a) current NFL players, and (b) people who tried out for NFL or AFL Member Clubs, or World League of American Football, NFL Europe League or NFL Europa League teams, but did not make it onto preseason, regular season or postseason rosters, or practice squads, developmental squads or taxi squads.

8. What if I am not sure whether I am included in the Settlement Class?

If you are not sure whether you are included in the Settlement Class, you may call 1-800-000-0000 with questions or visit www.NFLConcussionSettlement.com. You may also write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000. You may also consult with your own attorney.

9. What are the different levels of neurocognitive impairment?

Various levels of neurocognitive impairment are used in this Notice. More details can be found in the Injury Definitions, which are available at www.NFLConcussionSettlement.com or by calling 1-800-000-0000.

- Level 1 Neurocognitive Impairment covers ***moderate cognitive impairment***. It will be established in part with evidence of decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- Level 1.5 Neurocognitive Impairment covers ***early Dementia***. It will be established in part with evidence of moderate to severe cognitive decline, which includes a decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- Level 2 Neurocognitive Impairment covers ***moderate Dementia***. It will be established in part with evidence of severe decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.

If neurocognitive impairment is temporary and only occurs with delirium, or as a result of substance abuse or medicinal side effects, it is not covered by the Settlement.

10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?

No. A retired player can be a Settlement Class Member regardless of whether he is vested due to credited seasons or total and permanent disability under the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

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CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM

11. What is the Baseline Assessment Program (“BAP”)?

All living retired players who have earned at least one-half of an Eligible Season (*see* Question 18), who do not exclude themselves from the Settlement (*see* Question 30), and who timely register to participate in the Settlement (*see* Question 26) may participate in the Baseline Assessment Program (“BAP”).

The BAP will provide baseline neuropsychological and neurological assessment examinations to determine whether retired players are currently suffering from cognitive impairment. Retired players will have from two to ten years, depending on their age as of the date the Settlement is finally approved and any appeals are fully resolved, to have a baseline examination conducted through a nationwide network of qualified and independent medical providers.

- Retired players 43 or older as of the date the Settlement goes into effect will need to have a baseline examination within two years of the start of the program.
- Retired players under the age of 43 as of the date the Settlement goes into effect will need to have a baseline examination within 10 years, or before they turn 45, whichever comes sooner.

Retired players who are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment) are eligible to receive further medical testing and/or treatment (including counseling and pharmaceuticals) for that condition for the ten-year term of the BAP or five years from diagnosis, whichever is longer.

Settlement Class Members who participate in the BAP will be encouraged to provide their confidential medical records for use in research into cognitive impairment and safety and injury prevention with respect to football players.

Although all retired players are encouraged to take advantage of the BAP and receive a baseline examination, you do not need to participate in the BAP to receive a monetary award, but your award may be reduced by 10% if you do not participate in the BAP, as explained in more detail in Question 20.

12. Why should I get a BAP baseline examination?

Getting a BAP baseline examination will be beneficial to you and your family. It will determine whether you have any cognitive impairment, and if you are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment), you are eligible to receive further medical testing and/or treatment for that condition. In addition, whether or not you have any cognitive impairment today, the results of the BAP baseline examination can be used as a comparison to measure any subsequent deterioration of your cognitive condition over the course of your life. Participants also will be examined by at least two experts during the BAP baseline examinations, a neuropsychologist and a neurologist, and the retired player and/or

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his family members will have the opportunity to ask questions relating to any cognitive impairment during those examinations.

Participation in the BAP does not prevent you from filing a claim for a monetary award. For the next 65 years, retired players will be eligible for compensation paid from the Monetary Award Fund if they develop a Qualifying Diagnosis (*see Question 14*). Participation in the BAP also will help ensure that, to the extent you receive a Qualifying Diagnosis in the future, you receive the maximum monetary award to which you are entitled (*see Question 20*).

[13. How do I schedule a baseline assessment examination and where can I get it done?]

You need to register for Settlement benefits before you can get a baseline assessment examination. Registration will not be available until after the Court grants final approval to the Settlement and any appeals are fully resolved. **You can sign-up at www.NFLConcussionSettlement.com or by calling 1-800-000-0000 to receive additional notice about registration when it becomes available.**

The BAP Administrator will send notice to those retired players determined during registration to be eligible for the BAP, explaining how to arrange for an initial baseline assessment examination. The BAP will use a nationwide network of qualified and independent medical providers who will provide both the initial baseline assessment as well as any further testing and/or treatment. The BAP Administrator, which will be appointed by the Court, will establish the network of medical providers.

MONETARY AWARDS

[14. What diagnoses qualify for monetary awards?]

Monetary awards are available for the diagnosis of ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia), or Death with CTE (the "Qualifying Diagnoses"). A Qualifying Diagnosis can occur at any time until the end of the 65-year term of the Monetary Award Fund.

If a retired player receives a monetary award based on a Qualifying Diagnosis, and later is diagnosed with a different Qualifying Diagnosis that entitles him to a larger monetary award than his previous award, he will be eligible for an increase in compensation.

[15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?]

No. You do not need to prove that a Qualifying Diagnosis was caused by playing professional football or that you experienced head injuries in the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League in order to receive a monetary award. The fact that a retired player receives a Qualifying Diagnosis is sufficient to be eligible for a monetary award.

You also do not need to exclude the possibility that the Qualifying Diagnosis was caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.

[16. How much money will I receive?]

The amount of money you will receive depends on the retired player's:

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- Specific Qualifying Diagnosis,
- Age at the time he was diagnosed (*see Question 17*),
- Number of seasons played or practiced in the NFL or the AFL (*see Question 18*),
- Diagnosis of a prior stroke or traumatic brain injury (*see Question 19*),
- Participation in a baseline assessment exam (*see Question 20*), and
- Whether there are any legally enforceable liens on your award.

The table below lists the maximum amount of money available for each Qualifying Diagnosis before any adjustments are made.

QUALIFYING DIAGNOSIS	MAXIMUM AWARD AVAILABLE
Amyotrophic lateral sclerosis (ALS)	\$5 million
Death with CTE (diagnosed after death)	\$4 million
Parkinson's Disease	\$3.5 million
Alzheimer's Disease	\$3.5 million
Level 2 Neurocognitive Impairment (<i>i.e.</i> , moderate Dementia)	\$3 million
Level 1.5 Neurocognitive Impairment (<i>i.e.</i> , early Dementia)	\$1.5 million

Monetary awards may be increased up to 2.5% per year during the 65-year Monetary Award Fund term for inflation.

To receive the maximum amount outlined in the table, a retired player must have played for at least five Eligible Seasons (*see Question 18*) and have been diagnosed when younger than 45 years old.

Derivative Claimants are eligible to be compensated from the monetary award of the retired player with whom they have a close relationship in an amount of 1% of that award. If there are multiple Derivative Claimants for the same retired player, the 1% award will be divided among the Derivative Claimants according to the law where the retired player (or his Representative Claimant, if any) resides.

17. How does the age of the retired player at the time of his diagnosis affect his monetary award?

Awards are reduced for retired players who were 45 or older when diagnosed. The younger a retired player is at the time of diagnosis, the greater the award he will receive. Setting aside the other downward adjustments to monetary awards, the table below provides:

- The average award for people diagnosed between the ages of 45-49; and
- The amount of the award for those under age 45 and over 79.

The actual amount will be determined based on each retired player's actual age at the time of diagnosis and on other potential adjustments.

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AGE AT DIAGNOSIS	ALS	DEATH W/CTE	PARKINSON'S	ALZHEIMER'S	LEVEL 2	LEVEL 1.5
Under 45	\$5,000,000	\$4,000,000	\$3,500,000	\$3,500,000	\$3,000,000	\$1,500,000
45 - 49	\$4,500,000	\$3,200,000	\$2,470,000	\$2,300,000	\$1,900,000	\$950,000
50 - 54	\$4,000,000	\$2,300,000	\$1,900,000	\$1,600,000	\$1,200,000	\$600,000
55 - 59	\$3,500,000	\$1,400,000	\$1,300,000	\$1,150,000	\$950,000	\$475,000
60 - 64	\$3,000,000	\$1,200,000	\$1,000,000	\$950,000	\$580,000	\$290,000
65 - 69	\$2,500,000	\$980,000	\$760,000	\$620,000	\$380,000	\$190,000
70 - 74	\$1,750,000	\$600,000	\$475,000	\$380,000	\$210,000	\$105,000
75 - 79	\$1,000,000	\$160,000	\$145,000	\$130,000	\$80,000	\$40,000
80+	\$300,000	\$50,000	\$50,000	\$50,000	\$50,000	\$25,000

Note: The age of the retired player at diagnosis (not the age when applying for a monetary award) is used to determine the monetary amount awarded.

18. How does the number of seasons a retired player played affect his monetary award?

Awards are reduced for retired players who played less than five “Eligible Seasons.” The Settlement uses the term “Eligible Season” to count the seasons in which a retired player played or practiced in the NFL or AFL. A retired player earns an Eligible Season for:

- Each season where he was on an NFL or AFL Member Club’s “Active List” for either three or more regular season or postseason games, or
- Where he was on an Active List for one or more regular or postseason games and then spent two regular or postseason games on an injured reserve list or inactive list due to a concussion or head injury.
- A retired player also earns one-half of an Eligible Season for each season where he was on an NFL or AFL Member Club’s practice, developmental, or taxi squad for at least eight games, but did not otherwise earn an Eligible Season.

The “Active List” means the list of all players physically present, eligible and under contract to play for an NFL or AFL Member Club on a particular game day within any applicable roster or squad limits in the applicable NFL or AFL Constitution and Bylaws.

Time spent playing or practicing in the World League of American Football, NFL Europe League, and NFL Europa League does not count towards an Eligible Season.

The table below lists the reductions to a retired player’s (or his Representative Claimant’s) monetary award if the retired player has less than five Eligible Seasons. To determine the total number of Eligible Seasons

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credited to a retired player, add together all of the earned Eligible Seasons and half Eligible Seasons. For example, if a retired player earned two Eligible Seasons and three half Eligible Seasons, he will be credited with 3.5 Eligible Seasons.

NUMBER OF ELIGIBLE SEASONS	PERCENTAGE OF REDUCTION
4.5	10%
4	20%
3.5	30%
3	40%
2.5	50%
2	60%
1.5	70%
1	80%
.5	90%
0	97.5%

19. How do prior strokes or traumatic brain injuries of a retired player affect his monetary award?

It depends. A retired player's monetary award (or his Representative Claimant monetary award) will be reduced by 75% if he experienced a medically diagnosed stroke that occurred:

- Before receiving a Qualifying Diagnosis, or
- A severe traumatic brain injury unrelated to NFL football that occurred during or after the time the retired player played NFL football but before he received a Qualifying Diagnosis.

The award will not be reduced if the retired player (or his Representative Claimant) can show by clear and convincing evidence that the stroke or traumatic brain injury is not related to the Qualifying Diagnosis.

20. How is a retired player's monetary award affected if he does not participate in the BAP program?

It depends on when the retired player receives his Qualifying Diagnosis and the nature of the diagnosis. There is a 10% reduction to the monetary award if the retired player does not participate in the BAP and:

- Did not receive a Qualifying Diagnosis prior to [Date of Preliminary Approval Order], and
- Receives a Qualifying Diagnosis (other than ALS) after his deadline to receive a BAP baseline assessment examination.

21. Can I receive a monetary award even though the retired player is dead?

Yes. Representative Claimants for deceased retired players with a Qualifying Diagnoses will be eligible to receive monetary awards. If the deceased retired player died before January 1, 2006, however, the Representative Claimant will only receive a monetary award if the Court determines that a wrongful death or survival claim is allowed under applicable state law.

Derivative Claimants also will be eligible for a total award of 1% of the monetary award that the Representative Claimant for the deceased retired player receives (see Question 16).

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[22. Will this Settlement affect my participation in NFL or NFLPA-related benefits programs?]

No. The Settlement benefits are completely independent of any benefits programs that have been created by or between the NFL and the NFL Players Association. This includes the 88 Plan (Article 58 of the 2011 Collective Bargaining Agreement) and the Neuro-Cognitive Disability Benefit (Article 65 of the 2011 Collective Bargaining Agreement).

Note: The Settlement ensures that a retired player who has signed, or will sign, a release as part of his Neuro-Cognitive Disability Benefit application, will not be denied Settlement benefits.

[23. Will this Settlement prevent me from bringing workers' compensation claims?]

Claims for workers' compensation will not be released by this Settlement.

EDUCATION FUND

[24. What type of education programs are supported by the Settlement?]

The Settlement will provide \$10 million in funding to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL's medical and disability programs and other educational programs and initiatives.

Retired players will be able to actively participate in such initiatives if they desire.

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT

[25. What am I giving up to stay in the Settlement Class?]

Unless you exclude yourself from the Settlement, you cannot sue the NFL Parties, the Member Clubs, or related individuals and entities, or be part of any other lawsuit against the NFL Parties about the issues in this case. This means you give up your right to continue to litigate any claims related to this Settlement, or file new claims, in any court or in any proceeding at any time. You also are promising not to sue the National Collegiate Athletic Association or other collegiate, amateur or youth football organizations and entities for your cognitive injuries if you receive a monetary award under this Settlement. **However, the Settlement does not release any claims for workers' compensation (see Question 23) or claims alleging entitlement to NFL medical and disability benefits available under the Collective Bargaining Agreement.**

Please note that certain Plaintiffs also sued the football helmet manufacturer Riddell and certain related entities (specifically, Riddell, Inc., Riddell Sports Group Inc., All American Sports Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG Holdings Corp.). **They are not parties to this Settlement and claims against them are not released by this Settlement.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Article XVIII of the Settlement Agreement contains the complete text and details of what Settlement Class Members give up unless they exclude themselves from the Settlement, so please read it carefully. The Settlement Agreement is available at www.NFLConcussionSettlement.com. If you have any questions you can talk to the law firms listed in Question 33 for free or you can talk to your own lawyer if you have questions about what this means.

How To GET BENEFITS

26. How do I get Settlement benefits?

To get benefits, you will need to register. Registration will not begin until after the Settlement is approved by the Court (*see* Question 37) and any appeals are fully resolved. Once that occurs, further notice will be provided about how to register for benefits. In the meantime, please go to www.NFLConcussionSettlement.com or call 1-800-000-0000 to sign-up for notice of registration. Registration must be completed in the time permitted (180 days from the time notice of registration is provided) if you wish to receive any of the benefits provided through this Settlement.

27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?

Yes. Retired NFL Football Players and Representative Claimants must submit claims for monetary awards within two years after the date of the diagnosis for which they claim a monetary award, or the date the Settlement is granted final approval and any appeals are fully resolved, whichever is later. This deadline may be extended to within four years of the Qualifying Diagnosis or the date the Settlement is granted final approval and any appeals are fully resolved if the Retired NFL Football Player or Representative Claimant can show substantial hardship beyond the Qualifying Diagnosis. Derivative Claimants must submit claims no later than 30 days after the Retired NFL Football Player through whom the close relationship is the basis for the claim (or the Representative Claimant of that retired player) receives a notice that he is entitled to a monetary award.

All claims must be submitted by the end of the 65-year term of the Monetary Award Fund.

28. Can I re-apply for compensation if my claim is denied?

Yes. A Settlement Class Member who submits a claim for a monetary award that is denied can re-apply in the future should the Retired NFL Football Player's medical condition change.

29. Can I appeal the determination of my monetary award claim?

Yes. The Settlement establishes a process for a Settlement Class Member to appeal the denial of a monetary award claim or the amount of the monetary award.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive benefits from this Settlement, and you want to retain the right to sue the NFL Parties about the legal issues in this case, then you must take steps to remove yourself from the Settlement. You can do this by asking to be excluded – sometimes referred to as “opting out” of – the Settlement Class.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

30. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail a letter or other written document to the Claims Administrator. Your request must include:

- Your name, address, telephone number, and date of birth;
- A copy of your driver's license or other government issued identification;
- A statement that "I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323" (or substantially similar clear and unambiguous language); and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

You must mail your exclusion request, postmarked no later than **Month 00, 0000** [Date ordered by the Court], to [INSERT INFORMATION], City, ST 00000.

31. If I do not exclude myself, can I still sue the NFL Parties for the same things later?

No. Unless you exclude yourself, you give up the right to sue the NFL Parties for all of the claims that this Settlement resolves. If you want to maintain your own lawsuit relating to the claims released by the Settlement, then you must exclude yourself by **Month 00, 0000**.

32. If I exclude myself, can I still get benefits from this Settlement?

No. **If you exclude yourself from the settlement you will not get any Settlement benefits.** You will not be eligible to receive a monetary award or participate in the Baseline Assessment Program.

THE LAWYERS REPRESENTING YOU

33. Do I have a lawyer in the case?

The Court has appointed a number of lawyers to represent all Settlement Class Members as "Co-Lead Class Counsel," "Class Counsel" and "Subclass Counsel" (*see* Question 6). They are:

Christopher A. Seeger SEAGER WEISS LLP 77 Water Street New York, NY 10005	Sol Weiss ANAPOL SCHWARTZ 1710 Spruce Street Philadelphia, PA 19103
<i>Co-Lead Class Counsel</i> Steven C. Marks PODHURST ORSECK P.A. City National Bank Building 25 W. Flagler Street, Suite 800	<i>Co-Lead Class Counsel</i> Gene Locks LOCKS LAW FIRM The Curtis Center, Suite 720 East 601 Walnut Street

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Miami, FL 33130-1780	Philadelphia, PA 19106
<i>Class Counsel</i>	<i>Class Counsel</i>
Arnold Levin LEVIN FISHBEIN SEDRAN & BERMAN 510 Walnut Street, Suite 500 Philadelphia, PA 19106	Dianne M. Nast NAST LAW LLC 1101 Market Street, Suite 2801 Philadelphia, Pennsylvania 19107
<i>Counsel for Subclass 1</i>	<i>Counsel for Subclass 2</i>

You will not be charged for contacting these lawyers. If you are already represented by an attorney, you may contact your attorney to discuss the proposed settlement. If you are not already represented by an attorney, and you want to be represented by your own lawyer, you may hire one at your own expense.

Q5. How will the lawyers be paid?

At a later date to be determined by the Court, Co-Lead Class Counsel, Class Counsel and Subclass Counsel will ask the Court for an award of attorneys' fees and reasonable costs. The NFL Parties have agreed not to oppose or object to the request for attorneys' fees and reasonable incurred costs if the request does not exceed \$112.5 million. These fees and incurred costs will be paid separately by the NFL Parties and not from the \$760 million settlement funds. Settlement Class Members will have an opportunity to comment on and/or object to this request at an appropriate time. Ultimately, the award of attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

Q5. How do I tell the Court if I do not like the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you or your attorney must submit your written objection to the Court. The objection must include the following:

- The name of the case and multi-district litigation, *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323;
- Your name, address, telephone number, and date of birth;
- The name of the Retired NFL Football Player through which you are a Representative Claimant or Derivative Claimant (if you are not a retired player);
- Written evidence establishing that you are a Settlement Class Member;
- A detailed statement of your objections, and the specific reasons for each such objection, including any facts or law you wish to bring to the Court's attention;

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- Any other supporting papers, materials or briefs that you want the Court to consider in support of your objection; and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

In addition, if you intend to appear at the final approval hearing (the “Fairness Hearing”), you must submit a written notice of your intent [INSERT REQUIREMENTS FROM PRELIMINARY APPROVAL ORDER] by [INSERT DATE.]

The requirements to object to the Settlement are described in detail in the Settlement Agreement in section 14.3.

You must file your objection with the Court no later than **Month 00, 0000 [date ordered by the Court]**:

COURT
Clerk of the Court/Judge Anita B. Brody United States District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797

36. What is the difference between objecting to the Settlement and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement or want it to say something different. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and you do not want to receive any Settlement benefits. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. The Court will determine if you are allowed to speak if you request to do so (*see* Question 39).

37. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing at XX:00 x.m. on **Month 00, 0000**, at the United States District Court for the Eastern District of Pennsylvania, located at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.NFLConcussionSettlement.com or call 1-800-000-0000. At this hearing, the Court will hear evidence about whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and may elect to listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

The Court will consider the request for attorneys' fees and reasonable costs by Co-Lead Class Counsel, Class Counsel and Subclass Counsel (*see* Question 34) after the Fairness Hearing, which will be set at a later date by the Court.

38. Do I have to attend the hearing?

No. Co-Lead Class Counsel, Class Counsel and Subclass Counsel will answer questions the Court may have. But you are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not necessary.

39. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. The Court will determine whether to grant you permission to speak. To make such a request, you must file a written notice stating that it is your intent to appear at the *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323 Fairness Hearing ("Notice of Intention to Appear"). Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Court no later than Month 00, 0000.

GETTING MORE INFORMATION

40. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.NFLConcussionSettlement.com. You also may write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000 or call 1-800-000-0000.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE NFL PARTIES FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323

No. 14-29

**DECLARATION OF KATHERINE
KINSELLA**

I, Katherine Kinsella, being duly sworn, hereby declare as follows:

1. I am President of Kinsella Media, LLC ("KM"), an advertising and legal notification firm in Washington, D.C. specializing in the design and implementation of notification programs to reach unidentified putative class members primarily in consumer and antitrust class actions and claimants in bankruptcy and mass tort litigation. My business address is 2120 L Street, NW, Suite 860, Washington, D.C. 20037. My telephone number is (202) 686-4111.
2. I submit this declaration at the request of the parties in connection with *In re: National Football League Players' Concussion Injury Litigation*. A detailed Notice Plan is attached.
3. This declaration is based upon my personal knowledge and upon information provided by the parties, my associates, and staff. The information is of a type reasonably relied upon in the fields of advertising, media and communications.
4. KM has developed and directed some of the largest and most complex national notification programs in the country. The scope of the firm's work includes notification programs in antitrust, bankruptcy, consumer fraud, mass tort, and product liability litigation. Specific cases have involved, among others, asbestos, breast implants, home siding and roofing products, infant formula, pharmaceuticals, polybutylene plumbing,

tobacco, and Holocaust claims. The firm has developed or consulted on over 700 notification programs and has placed over \$300 million in media notice.

5. Courts have admitted expert testimony from KM on our firm's quantitative and qualitative evaluations of notice programs. Many Courts have commented favorably, on the record, regarding the effectiveness of notice plans prepared by KM.
6. I have testified as an expert at trial and in a deposition in *Engle v. R. J. Reynolds Tobacco*, No. 94-08273 (Fla. Cir. Ct., Dade County). I have been deposed as an expert in *In re NASDAQ Market-Makers Antitrust Litigation*, M21-68 RWS), 94-CIV. 3994 (RWS), M.D.L. No. 123 (S.D.N.Y.), *In re Dow Corning*, No. 95-20512 (Bankr. E.D. Mich.), *Georgine v. Amchem, Inc. et al.*, C.A. No. 93-CV-0215 (E.D. Pa.), *In re W. R. Grace & Co.*, Chapter 11, No.01-01139 (JJF) (Bankr. D. Del.), *Gross v. Chrysler Corp.*, No. 061170 (Md. Cir. Ct., Montgomery County), *In re Bluetooth Headset Products Liability Litigation*, No. 2:07-ML-1822-DSF-E (C.D. Cal.), and *Donovan v. Philip Morris USA, Inc.*, No. 06-CA-12234 (D. Mass.). I have testified in court in *In re Swan Transportation Company*, Chapter 11, Case No. 01-11690, *Cox v. Shell Oil Co.*, No. 18,844 (Tenn. Ch. Ct., Obion County), *Ahearn v. Fibreboard Corporation*, C.A. No. 6:93cv526 (E.D. Tex.) and *Continental Casualty Co. v. Rudd*, C.A. No. 6:94cv458 (E.D. Tex.).

7. I am the author of the following:

- a. *Buyer Beware: Eight Pitfalls That Can Jeopardize Your Class Action Notice Program*, published in the July 12, 2013 issue of Class Action Litigation Report.

- b. *The Plain Language Tool Kit for Class Action Notice*, published in 2010 in A Practitioner's Guide to Class Actions, as well as the October 25, 2002 issue of Class Action Litigation Report;
 - c. *Quantifying Notice Results in Class Actions – the Daubert/Kumho Mandate*, published in 2010 in A Practitioner's Guide to Class Actions, as well as the July 27, 2001 issue of Class Action Litigation Report and the August 7, 2001 issue of The United States Law Week; and
 - d. *The Ten Commandments of Class Action Notice*, published in the September 24, 1997 issue of the Toxics Law Reporter.
8. I am also co-author of the following:
 - a. *International Class Action Notice*, published in 2012 in World Class Action: A Guide to Group and Representative Actions Around the Globe;
 - b. *Class Notice and Claims Administration*, published in 2010 in Private Enforcement of Antitrust Law in the United States: A Handbook and in 2012 in The International Handbook on Private Enforcement of Competition Law;
 - c. *REALITY CHECK: The State of New Media Options for Class Action Notice*, published in 2010 in A Practitioner's Guide to Class Actions, as well as the February 26, 2010 issue of the Class Action Litigation Report; and
 - d. *How Viable Is the Internet for Class Action Notice*, published in the March 25, 2005 issue of Class Action Litigation Report.
9. KM was retained to design and implement the Notice Plan in this litigation. I submit this declaration to describe the elements of the Notice Plan.

Proposed Notice Plan

10. A two-part notification plan was designed and includes:

- a. Direct notice by first-class mail to all known Retired NFL Football Players and heirs of deceased retired players; and
- b. Broad notice through the use of paid media including national consumer magazines, trade publications, television, radio, and Internet advertising.

11. A Supplemental Notice Plan will be prepared after the Settlement becomes effective to inform the Settlement Class about registration.

Direct Mail Notice

12. The Settlement Class is made up of a number of discrete groups. In addition to the Retired NFL Football Players, there are legal representatives and family members. To determine the size and make-up of the Settlement Class, KM worked with proposed Claims Administrator, BrownGreer PLC (“BrownGreer”), to develop a comprehensive list of Settlement Class Members to whom direct notice can be mailed.

13. BrownGreer worked through a total of 29 datasets, which included some combination of living and deceased players’ names, dates of birth, dates of death, team names, years played, and the names, addresses, dates of birth, and dates of death of players’ beneficiaries. In order to build the most comprehensive list, BrownGreer:

- a. Compiled all 29 datasets into one;
- b. Removed duplicate records; and
- c. Separated records of deceased NFL Football Players; and
- d. Deleted records that only had a name and no address information.

14. BrownGreer worked with LexisNexis in several steps to:

- a. Find the best-known addresses for each individual;

- b. Run through its death database to identify which individuals are deceased; and
 - c. Run the dataset of deceased individuals through their first-degree relative database to identify known relatives and their best-known addresses. First-degree relatives include children, spouses, parents, and siblings.
15. BrownGreer will combine the list of living players and beneficiaries with the list of deceased players' relatives to form the notice mailing list. More detailed information about all of BrownGreer's efforts is included in the Notice Plan.
16. Direct Mail Notice will consist of mailing a cover letter and the Long-form Notice ("Notice") (attached as Exhibit 3 to the Notice Plan) to potential Settlement Class Members to inform them of their rights and how they may participate in the Class Action Settlement. This Direct Mail Notice will be distributed via first-class mail to:
- a. All readily identifiable Settlement Class Members, which includes Retired Football NFL Players and heirs of deceased retired players developed through the process previously outlined.
 - b. Anyone who calls the toll-free information line, or writes or emails the Claims Administrator to request the Long-form Notice.
17. The Notice will also be available on the Settlement Website as a PDF file.

Paid Media Notice

18. As detailed in the Notice Plan, KM undertook an analysis of the Settlement Class and determined there are ethnic, age, and gender differences among the Settlement Class Members. The Settlement Class is made up of a number of discrete groups, each of which consumes different media based on their demographics. In addition to the Retired NFL Football Players, there are legal representatives and family members.

19. The Notice Plan is based on specifically reaching consumers who fit within these demographic groups of Settlement Class Members. Therefore, specific media was chosen to reach all of the demographic groups included in the Settlement Class. Further details about why each medium was chosen are available in the Notice Plan.

Paid Media Placements

20. The proposed media schedule includes advertising in national consumer magazines, trade publications, television, radio, and Internet advertising to reach the groups mentioned above.

21. The short-form notice (“Summary Notice”) will appear in national consumer magazines as follows:

- a. A two-page, color spread (9.75” x 6.875”) once in *Jet* with an estimated circulation of 900,000.
- b. A full-page, color ad (7” x 10”) twice in *People* with an estimated circulation of 3,475,000.
- c. A full-page, color ad (7” x 10”) once in *Sports Illustrated* with an estimated circulation of 3,000,000.
- d. A full-page, color ad (7" x 10") once in *Time* with an estimated circulation of 3,250,000.

22. The Summary Notice will appear in trade publications as follows:

- a. A full-page, color ad (7” x 10”) in *Long-Term Living* with an estimated circulation of 50,080.
- b. A full-page, color ad (7.25” x 10”) in *McKnight’s Long-Term Care News & Assisted Living* with an estimated circulation of 40,200.

- c. A full-page, color ad (7" x 10") in *Provider* with an estimated circulation of 50,200.
 - d. A full-page, color ad (7" x 10") in *Senior Living Executive* with an estimated circulation of 21,808.
23. Thirty-second television commercials ("TV Spots"), which will prominently feature the toll-free number and the Settlement Website address, will appear for two to three weeks across a variety of national channels and programs. The TV Spots will run throughout the day in different program environments in order to reach the highest number of viewers.
24. Thirty-second radio commercials, which will prominently feature the toll-free number and the Settlement Website address, will run for two to three weeks on American Urban Radio Networks ("AURN"). For this Notice Plan, network radio is being used to primarily reach African American Settlement Class Members, as well as Retired NFL Football Players. Radio usage is especially high among African Americans as compared to the general population.¹
25. Internet advertising will include the following placements for a 30-day period:
- a. Banner advertisements measuring 728x90, 300x250, and 160x600 pixels on a rotating basis, on the following targeted websites:
 - i. CNN.com
 - ii. Weather.com
 - iii. Facebook.com
 - b. A variety of advertisements on the following networks:

¹ Target Market News, *Media Audit study shows African Americans more engaged with media*, at <http://www.targetmarketnews.com/storyid07260702.htm> (last visited Nov. 9, 2013).

- i. Microsoft Media Network
- ii. Specific Media
- iii. Yahoo!

Advertising on NFL Properties

26. The NFL has agreed to provide notice on the NFL Network. The Notice Plan calls for 30-second TV Spots to be aired throughout the day in different program environments to reach the highest number of viewers over a period of two to three weeks. It is expected that the TV Spots will appear across all programming on the NFL Network.
27. NFL Network viewers are primarily male, which may help reach Retired NFL Football Players and male heirs to whom direct mail notice is not possible. It is likely that given the importance of having a retired NFL player as part of the family, relatives of these individuals may be engaged in following NFL football and are potential viewers of the NFL programming.
28. The NFL has also agreed to provide notice on NFL.com. Notice on NFL.com will allow Settlement Class Members to click on a banner ad on that website and be directed to the Settlement Website or provide the address to Settlement Class Members textually. Banner advertisements (728x90 pixels and 300x250 pixels) will appear on pages all over the site.
29. It is expected that some percentage of Retired NFL Football Players who cannot be reached through direct mail notice, as well as family members, will visit the NFL.com website.

Additional Outreach

30. In order to reach those people who may know Retired NFL Football Players, and ask them to pass along information about the Settlement, KM will undertake additional outreach as part of the Notice Plan. This will include:
- a. A mailing to the directors of approximately 60,000 nursing homes, assisted living facilities, and rehab facilities. The mailing will include a cover letter requesting their assistance in locating Retired NFL Football Players that are in their facilities, as well as a copy of the summary notice.
 - b. Reaching out to various NFL organizations to request they inform their members of the Settlement and assist in locating Retired NFL Football Players whose address are unknown. This includes outreach to individual team organizations, alumni groups, and the NFL Player Care Foundation.

Electronic Notice

31. A Settlement Website will be established to enable potential Settlement Class Members to get information on the Settlement.
32. In order to help search engine users locate the Settlement Website – both those specifically looking for it and those looking for related topics – KM will purchase sponsored links that could appear when searchers enter certain terms on Google and Bing search engines.

Content and Form of Notices

33. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” KM applies the plain language requirement in drafting notices in federal and state class actions. The firm maintains a strong commitment to adhering to the plain language requirement, while drawing on its

experience and expertise to draft notices that effectively convey the necessary information to Settlement Class Members.

34. The Summary Notice, attached as Exhibit 5 to the Notice Plan, is designed to get the reader's attention. The Summary Notice concisely and clearly states, in plain easily understandable language, all required information. The Summary Notice refers readers to the availability of a Long-form Notice, which is available to those who call or visit the website.
35. The Long-form Notice will be available at the website or by calling the toll-free number. The Long-form Notice provides substantial information, including all specific instructions Settlement Class Members need to follow to properly exercise their rights, and background on the issues in the case. It is designed to encourage readership and understanding, in a well-organized and reader-friendly format.

Conclusion

36. KM estimates that the Direct Mail Notice, in combination with the Paid Media Placements, will reach over 90% of Settlement Class Members. It is my opinion that the Notice Plan will provide the best notice practicable under the circumstances, and it is consistent with the standards employed by KM in notification plans designed to reach unidentified members of settlement groups or classes. The Notice Plan as designed is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

I declare under penalty of perjury that the foregoing is true and correct.



Katherine Kinsella

January 6, 2014

Date



NOTICE PLAN

*In re: National Football League Players'
Concussion Injury Litigation*

No. 2:12-md-02323

United States District Court for the Eastern District of
Pennsylvania

TABLE OF CONTENTS

	PAGE
FIRM OVERVIEW	1
CASE BACKGROUND	
Class Definition	3
Situation Analysis	4
NOTICE PLAN OVERVIEW	
Plan Components	8
Direct Notice	9
Paid Media Program	10
Paid Media Placements Summary	11
PAID MEDIA PLACEMENTS	
Overview	13
Consumer Magazines	14
Trade Publications	16
Television	18
National Radio	19
Internet Advertising	20
EFFECTIVENESS OF NOTICE PLAN	22
NOTICE DESIGN	
Long-form Notice	24
Summary Notice	25
Radio and TV Ads	26
Website and Internet Ads	27
TOLL-FREE TELEPHONE SUPPORT	28
ADDITIONAL OUTREACH OPPORTUNITIES	29
EXHIBITS	
Exhibit 1 – Selected KM Cases	
Exhibit 2 – Judicial Comments	
Exhibit 3 – Long-form Notice	
Exhibit 4 – Envelope	
Exhibit 5 – Summary Notice	

In re: National Football League Players' Concussion Injury Litigation

FIRM OVERVIEW

Kinsella Media, LLC ("KM") is a nationally recognized legal notification firm in Washington, D.C. specializing in the design and implementation of notification programs to reach unidentified putative class members primarily in consumer and antitrust class actions and claimants in bankruptcy and mass tort litigation.

KM has developed and directed some of the largest and most complex national notification programs, primarily in antitrust, bankruptcy, consumer fraud, mass tort, and product liability litigation. Specific cases have spanned a broad spectrum of issues, including asbestos, breast implants, home siding and roofing products, infant formula, pharmaceuticals, polybutylene plumbing, tobacco, and Holocaust claims. The firm has developed or consulted on over 700 notification programs and has placed over \$300 million in paid media notice. A selection of KM's case experience and judicial comments on our notification program are attached as Exhibits 1 and 2.

KM develops advertisements, press materials, websites, and other notice materials that bridge the gap between litigation complexities and the need for a clear and simple explanation of legal rights. The firm employs industry-recognized tools of media measurement to quantify the adequacy of the notice for the court, and ensures all notice materials are in "plain language" and are fully compliant with Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") and comparable state guidelines.

In re: National Football League Players' Concussion Injury Litigation

CASE BACKGROUND

In re: National Football League Players' Concussion Injury Litigation

CASE BACKGROUND: CLASS DEFINITION

The Settlement Class consists of:

- All living NFL Football players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club ("Retired NFL Football Players");
- Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players ("Representative Claimants"); and
- Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player ("Derivative Claimants").

The Settlement Class includes the following Subclasses:

- Subclass 1, which shall consist of: "Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants";¹ and,
- Subclass 2, which shall consist of: "Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE."

¹ "Qualifying Diagnosis" or "Qualifying Diagnoses" means Level 1.5 Neurocognitive Impairment (early Dementia), Level 2 Neurocognitive Impairment (moderate Dementia), Alzheimer's Disease, Parkinson's Disease, ALS, and/or Death with CTE, as defined in Exhibit 1 (Injury Definitions) of the Settlement Agreement.

In re: National Football League Players' Concussion Injury Litigation

CASE BACKGROUND: SITUATION ANALYSIS

The Settlement Class is made up of a number of discrete groups. In addition to the Retired NFL Football Players, there are legal representatives and family members.

To determine the size and make-up of the Settlement Class, KM worked with proposed Claims Administrator, BrownGreer PLC, to develop a comprehensive list of Settlement Class Members to whom direct notice could be provided.

The following work has been completed or is in process to build a comprehensive mailing list:

- BrownGreer ultimately received 27 datasets and created two more, for a total of 29 datasets, which included some combination of living and deceased players' names, dates of birth, dates of death, team names, years played, and the names, addresses, dates of birth, and dates of death of players' beneficiaries. None of the datasets provided the same data points.
 - The National Football League ("NFL") provided BrownGreer with seven sets of player data and one set of player and beneficiary data.
 - KM provided BrownGreer with three sets of player data, one set of beneficiary data, and three sets of combined player and beneficiary data, compiled for use in Dryer v. NFL, Case No. 09-cv-02182-PAM-AJB (D.Minn.)
 - Consulting firm ARPC provided BrownGreer with a dataset of deceased players.
 - Various NFL teams provided BrownGreer with datasets for living and deceased players and coaches.
 - BrownGreer programmed a web crawler to pull publicly available data from NFL.com, the official website of the NFL. A web crawler is a program designed to systematically search public websites and record information made available by those sites. It maintains a database of statistics for current and historical players, and BrownGreer pulled player names, dates of birth, and/or places of birth. Using this tool, BrownGreer pulled the full names and dates of birth for 27,267 players that the NFL lists as current and past players. This website does not provide mailing addresses for any players.
 - BrownGreer also programmed a web crawler to pull publicly available data from databasesports.com. Databasesports.com maintains an online database of statistics and other information for popular sports, including football. BrownGreer pulled player names, positions, dates of birth, and places of birth from that website. After

In re: National Football League Players' Concussion Injury Litigation

comparing this dataset to one KM provided, BrownGreer determined the sets were identical and excluded the databasesports.com set from the master dataset as redundant.

- BrownGreer compiled the datasets described in the preceding paragraphs into a master dataset that included approximately 205,000 names, many of which contained duplicative information.
- To identify and remove duplicate records from the dataset, BrownGreer designed 20 tests and database queries to run against the following fields: name, address, date of birth, and date of death.
 - Before running the tests, BrownGreer removed spaces and special characters from names and addresses. BrownGreer also standardized the abbreviations of directions, street suffixes, and other common address terms in all addresses.
- The first test identified all records that included only a name with no address information, date of birth, or date of death. BrownGreer removed these records from the dataset because LexisNexis, to whom BrownGreer will send the completed dataset, is unable to locate an address or other identifying information based on a name alone. LexisNexis provides addresses, dates of death, and known relative information based on their extensive sources, including the Social Security Death Index, the National Change of Address Database, national credit agencies and other databases.
- The other 19 tests compared names, addresses, dates of birth, and dates of death to identify duplicate records, retained the most complete record from among the duplicates, and extracted information one record was missing from a less complete, but otherwise duplicative record.
- After running the 20 tests, BrownGreer removed approximately 130,000 records from the dataset.
- The final dataset included approximately 75,000 living and deceased players and beneficiaries.
- BrownGreer then separated out the known deceased individuals and sent the dataset of the remaining individuals to LexisNexis.
- LexisNexis ran the dataset through their address database and provided BrownGreer with a list of best-known addresses for each individual.
- BrownGreer scrubbed the dataset by identifying and removing any duplicate records from the results and returned the dataset to LexisNexis.

In re: National Football League Players' Concussion Injury Litigation

- LexisNexis ran the dataset through their death database and identified which individuals are deceased in addition to the previously identified individuals as deceased.
- BrownGreer combined the list of individuals LexisNexis identified as deceased to the list of known deceased individuals and returned this dataset to LexisNexis.
- LexisNexis will run the dataset of deceased individuals through their first-degree relative database to identify known relatives and their best-known addresses. First-degree relatives include children, spouses, parents, and siblings.
- BrownGreer will combine the list of living players and beneficiaries with the list of deceased players' relatives to form the notice mailing list.

Because direct notice in this case will not reach all potential Settlement Class Members, a paid media notice program targeted to unidentified Settlement Class Members and other third parties is necessary. The various groups we are trying to reach – unidentified Retired NFL Football Players, spouses, family members, legal representatives, heirs, and caregivers – have different ethnic, age, and gender differences. They, therefore, consume different media based on their demographics. The Notice Plan that follows takes into consideration different media consumption habits as well as the need to reach out to third parties to assist with finding unidentified Retired NFL Football Players.

In re: National Football League Players' Concussion Injury Litigation

NOTICE PLAN OVERVIEW

In re: National Football League Players' Concussion Injury Litigation

NOTICE PLAN OVERVIEW: PLAN COMPONENTS

This Notice Plan outlines procedures to provide notice of the Settlement of *In re: National Football League Players' Concussion Injury Litigation* as a class action, consistent with the requirements set forth in Rule 23 of the Federal Rules of Civil Procedure.

Based on information provided by Co-Lead Class Counsel, and the results of research on the Settlement Class, KM recommends the following Notice Plan.

➤ **DIRECT NOTICE:** The Long-form Notice (Exhibit 3) will be:

- Sent via first-class mail to all individuals:
 - Whose names and addresses are readily identifiable; and
 - Who request a copy via the toll-free information line or Settlement Website detailed in the Publication Notice.
- Available on the informational website as a PDF file.

➤ **PAID MEDIA-BASED NOTICE:** After careful research of the demographics of Settlement Class Members, KM recommends broad paid media notice comprised of print, broadcast, and Internet vehicles that will reach those Settlement Class Members, including:

- National consumer magazines and trade publications;
- National television/radio spots;
- NFL Network television;
- NFL.com Internet advertising; and
- Internet banner ads on additional networks and hundreds of targeted websites.

To complement the Notice Plan and to ensure Settlement Class Members' easy access to updated information, KM recommends a dedicated informational website, and Internet search engine sponsorships through keyword/phrase searches to facilitate Settlement Class Members' access to the site.

SUPPLEMENTAL NOTICE: A Supplemental Notice Plan will be prepared after the Settlement becomes effective to inform the Settlement Class about registration.

In re: National Football League Players' Concussion Injury Litigation

NOTICE PLAN OVERVIEW: DIRECT NOTICE

Direct mail notice will consist of mailing the Long-form Notice in a large 9" x 12" envelope to identifiable Settlement Class Members, informing them of their legal rights and how they may participate in the Class Action Settlement. Attached as Exhibit 4 is a depiction of the envelope in which the Long-form Notice will be mailed.

The Long-form Notice will be sent to:

- All readily identifiable Settlement Class Members, which includes Retired NFL Football Players and heirs of deceased retired players developed through the process previously outlined. It is anticipated that the final list will include over 20,000 recipients.
- Anyone who calls a toll-free information line, or writes or emails the Claims Administrator to request the Long-form Notice. The toll-free information line and informational website address will appear prominently in the Publication Notice. Settlement Class Members may also download the Long-form Notice in PDF format from the informational website.

In re: National Football League Players' Concussion Injury Litigation

NOTICE PLAN OVERVIEW: PAID MEDIA PROGRAM

Direct notice will be provided to all identifiable Settlement Class Members. Paid media will be used to reach unidentifiable Settlement Class Members as it is guaranteed to appear and allows for control of the content, timing, and positioning of the message. Newspapers, consumer magazines, television, radio, and the Internet, among other sources, offer paid media opportunities.

KM researched the most appropriate media vehicles that would meet the requirements of due process in reaching unidentifiable Settlement Class Members. KM reviewed available consumer magazines, newspaper supplements, and Internet advertising, and determined that the media discussed below will provide an efficient plan for reaching potential Settlement Class Members.

In re: National Football League Players' Concussion Injury Litigation

NOTICE PLAN OVERVIEW: PAID MEDIA PLACEMENTS SUMMARY

The following list provides a brief summary of KM's recommended media placements in this case.

PRINT PUBLICATIONS

Consumer Magazines

- *Jet*
- *People*
- *Sports Illustrated*
- *Time*

Trade Publications

- *Long Term Living*
- *McKnight's Long-Term Care News*
- *Provider*
- *Senior Living Executive*

BROADCAST

Television

- Network Television and Cable
 - May include:
 - ABC
 - CBS
 - CNN
 - Headline News
 - The Weather Channel
- NFL Network

Radio

- American Urban Radio Networks

ONLINE MEDIA

Internet Banner Ads

- NFL.com
- CNN.com
- Facebook.com
- Weather.com
- Microsoft Media Network
- Specific Media
- Yahoo!

Keyword Search

- Google (includes Google, AOL, and Ask.com)
- Bing (Includes Bing/MSN and Yahoo!)

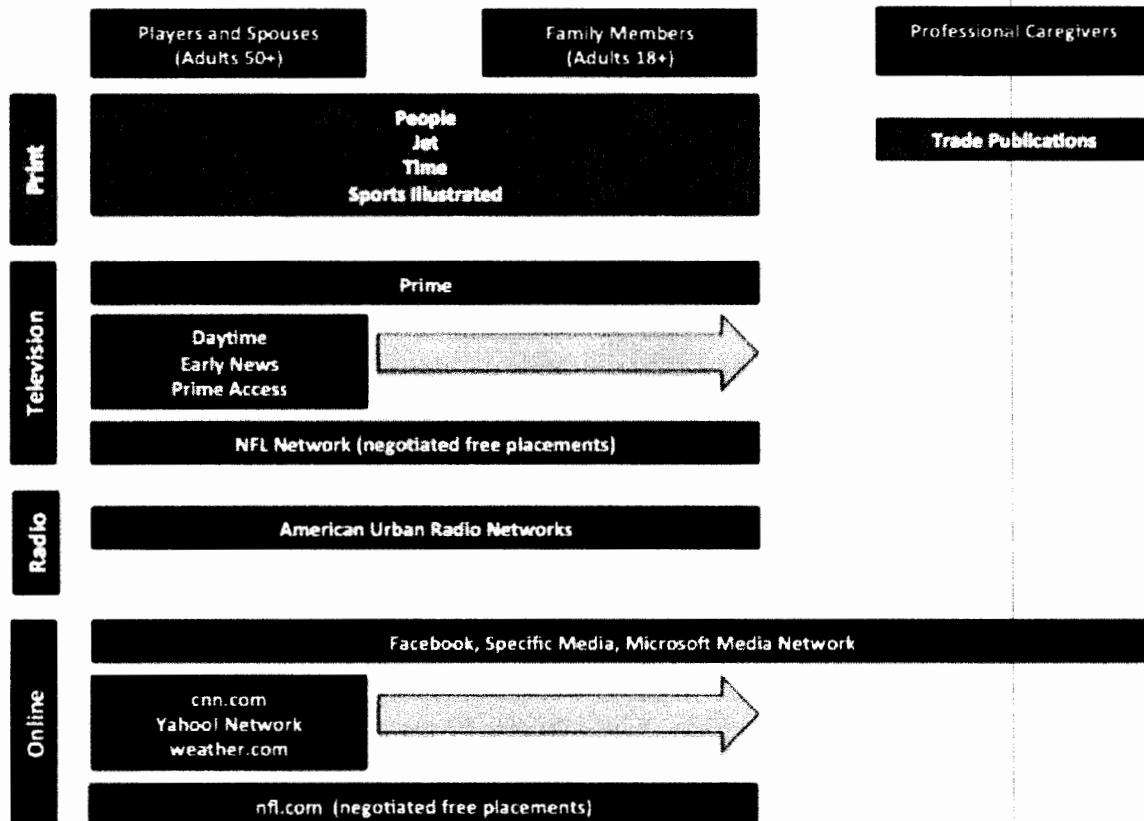
In re: National Football League Players' Concussion Injury Litigation

PAID MEDIA PLACEMENTS

In re: National Football League Players' Concussion Injury Litigation

PAID MEDIA PLACEMENTS: OVERVIEW

The Paid Media placements have been chosen to reach Retired NFL Football Players, spouses, family members, legal representatives, heirs, and caregivers. As outlined below, some of the media will reach multiple groups providing greater opportunities for exposure to the message about the Settlement.



In re: National Football League Players' Concussion Injury Litigation

PAID MEDIA PLACEMENTS: CONSUMER MAGAZINES

Most adults read one or more magazines during an average month and nearly three out of five adults read or look at a magazine daily. Heavy readers read 16 or more magazines per month. Weekly magazines quickly accumulate readership and provide timely and efficient notice to readers.

KM recommends the following consumer magazine placements:



- A full-page, color ad (7" x 10") in *Time* with an estimated circulation of 3,250,000.
- *Time* is a weekly news magazine covering national and international people, places, and events.
- Over 50% of *Time* readers are Adults 50+.



- A two-page, color spread in *Jet* with an estimated circulation of 900,000.
- *Jet* is the leading news weekly for the African-American community, covering national and global news.
- 25% of African-American Adults 18+ read an average issue of *Jet*.
- An average issue of *Jet* magazine has 9.7 readers per copy.



- A full-page, color ad (7" x 10") twice in *People* with an estimated circulation of 3,475,000.
- *People* is a weekly publication covering contemporary personalities in entertainment, politics, business, and other current events.
- *People* is the highest-ranking weekly magazine in coverage of Adults 18+.

In re: National Football League Players' Concussion Injury Litigation

- An average issue of *People* has 11.87 readers per copy.



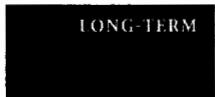
- A full-page, color ad (7" x 10") in *Sports Illustrated* with an estimated circulation of 3,000,000.
- *Sports Illustrated* is a weekly magazine covering sporting events and personalities through in-depth articles and stories.
- Over 35% of *Sports Illustrated*'s readers are 50+.
- Men 50+ are 36% more likely than the average adult to read *Sports Illustrated*.

In re: National Football League Players' Concussion Injury Litigation

PAID MEDIA PLACEMENTS: TRADE PUBLICATIONS

An important component of the Notice Plan is advertising in trade publications that are read by individuals who run or work at facilities where Retired NFL Football Players may now live.

KM recommends the following trade publication placements:



- A full-page ad (7" x 10") in *Long-Term Living* with an estimated circulation of 50,080.
- *Long-Term Living* is published 9 times per year and provides practical, in-depth, business-building, and patient/resident care information. Its readers are owners, administrators and directors of nursing at skilled nursing care and assisted living facilities; continuing care retirement centers; post-acute care facilities; and independent living communities.

McKnight's

Long-Term Care News & Assisted Living

- A full-page ad (7.25" x 10") in *McKnight's Long-Term Care News & Assisted Living* with an estimated circulation of 40,200.
- *McKnight's Long-Term Care News & Assisted Living* is published monthly. Editorial content provides reports on the events that affect the way care is delivered across the entire long-term care spectrum, ranging from the lower acuity assisted living setting, to the high acuity skilled nursing setting.

Provider

- A full-page ad (7" x 10") in *Provider* with an estimated circulation of 50,200.
- *Provider* is published monthly and is targeted to administrators, owners, multi-facility CEOs, medical directors, directors of nursing, certified nurse assistants, MD/DD staff and other key long-term staff specialists in facilities throughout the United States. *Provider*'s editorial focuses on key areas of industry concern, including: legislative and regulatory policy initiatives, business development and management, facility administration, nursing, marketing and consumer relations, resident care, financing and reimbursement, legal issues, and products and services.

In re: National Football League Players' Concussion Injury Litigation



- A full-page ad (7" x 10") in *Senior Living Executive* with an estimated circulation of 21,808.
- *Senior Living Executive* is published six times per year and is the official publication of the Assisted Living Federation of America. The magazine reaches mid to large size owners and operators of professionally managed assisted living communities. Written to top-level executives, the magazine offers solutions and strategies aimed at helping readers improve their companies' operational excellence including merger/acquisition pointers, performance management strategies, systems and infrastructure enhancements and services to residents.

In re: National Football League Players' Concussion Injury Litigation

PAID MEDIA PLACEMENTS: TELEVISION

Television has the ability to reach a wide number of target audience members with an immediate and accessible message. The combination of audio and visual message delivery increases the message impact. Viewers can quickly ascertain if the message is important and if so, decide to respond.

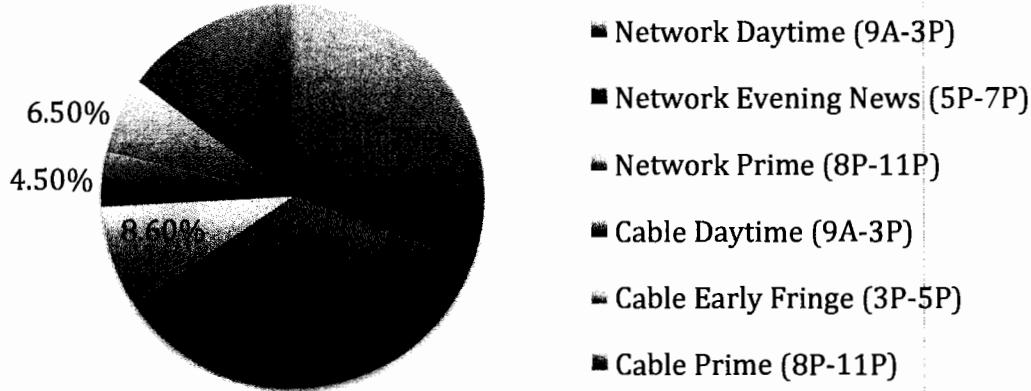
For this notice, there will be two television components:

- First, the NFL has agreed to make the NFL Network available for television advertisements. Notice will be aired through the day in different program environments to reach the highest number of viewers over a period of three weeks.
- Second, television advertisements will be aired across channels and programs targeting Adults 50+. The Notice Plan calls for notice to be aired throughout the day in different program environments to reach the highest number of viewers. A combination of broadcast and cable networks will be chosen, including, but not limited to, ABC, CBS, CNN, The Weather Channel, and Headline News.

Delivery Estimates:

- KM is requesting that the NFL deliver an estimated 10 Gross Rating Points ("GRPs") against Men 18+² by airing 30-second commercials across all programming/dayparts³ on the NFL Network.
- An estimated 82 television and cable Gross Rating Points ("GRPs") over a total of two weeks generating 84,976,600 gross impressions⁴ against Adults 50+.

The television schedule will be allocated as follows:



² Gross Rating Points (GRPs) represent the sum of all ratings delivered by the media vehicles in a schedule. A rating is the percentage of households or persons in the target audience who have been exposed to the media vehicles in the schedule. One GRP equals 1% of a given target population.

³ Dayparts are time segments into which the broadcast day is divided. In television, the dayparts are usually daytime (morning and afternoon), early fringe, prime time and late fringe. Other designations can be used such as early news or late news.

⁴ Gross Impressions are the duplicated sum of audiences of all media vehicles containing the notice.

In re: National Football League Players' Concussion Injury Litigation

PAID MEDIA PLACEMENTS: NATIONAL RADIO

National radio is bought in the form of network programming. This programming can be tailored for a specific age group of people based on the typical listeners to a network. For this Notice Plan, network radio will be purchased primarily to reach African American Settlement Class Members, as well as Retired NFL Football Players. Radio usage is especially high among African Americans as compared to the general population, as is television usage.⁵

The Radio Spot for this plan will be designed to appeal specifically to Settlement Class Members. Each 30-second spot will heavily promote the Settlement Website address for Settlement Class Members to obtain more information and register for benefits after the Settlement becomes effective. The Radio Spot will alert Settlement Class Members to the nature of the litigation.

KM recommends placing the Radio Spot on:

AMERICAN URBAN RADIO NETWORKS

- American Urban Radio Networks ("AURN") is the largest network reaching Urban America. AURN reaches an estimated 20 million listeners each week. Networks include programming such as: "Russ Par Weekend Show," "Bobby Jones Gospel Countdown," "The Bev Smith Show," and "Dr. Ian Smith," among others. These radio networks provide additional coverage in markets across the U.S. that have significant African American populations.

⁵ Target Market News, *Media Audit study shows African Americans more engaged with media*, available at <http://www.targetmarketnews.com/storyid07260702.htm>.

In re: National Football League Players' Concussion Injury Litigation

PAID MEDIA PLACEMENTS: INTERNET ADVERTISING

Like the television portion of the Notice Plan, there are two components to the Internet portion of the Notice Plan. First, the NFL has agreed to provide Internet advertising on NFL.com. Second, KM recommends Internet on additional networks and targeted sites to reach potential Settlement Class Members. Internet advertising will provide potential Settlement Class Members with additional national notice opportunities beyond the broad-reaching print, radio, and television program. Internet advertising delivers an immediate message and allows the viewer of an advertisement to instantly click through to a website for further information.

Delivery of Internet impressions to specific sites and categories within sites are subject to availability at the time KM purchases the media.

WEBSITE ADVERTISING

KM recommends placing ads on the following targeted websites:

- CNN.com
- Weather.com
- Facebook.com
- NFL.com

KM recommends placing Internet advertising on the following networks for approximately 30 days:



- Microsoft Media Network is a premium ad network of top-ranked commercial sites.



- Specific Media is a leading portfolio of websites attracting large and engaged audiences on the web.



- Yahoo! is a leading Internet brand and a global online network of integrated services providing users with entertainment and other quality content.

In re: National Football League Players' Concussion Injury Litigation

KEYWORD SEARCH ADS

Search engines are among the Internet's most frequently used sites. In order to help search engine users locate the informational website about this case – both those specifically looking for it and those looking for related topics – KM will purchase sponsored links that may appear when searchers enter certain terms.

Keyword search ads will appear on Google (includes Google, AOL, and Ask.com) and Bing (includes Bing/MSN and Yahoo!) search engines. KM will contract with Google AdWords to place Google ads, and with Microsoft Ad Center to place Bing ads. Possible keyword/phrase searches could include:

- NFL Concussion Class Action
- NFL Concussion Settlement
- NFL Concussion Lawsuit
- NFL Brain Injury

After KM contracts with the search engines for sponsored links of the selected keywords/phrases, a user entering an applicable keyword/phrase may see an ad similar to the sample ad below either in the section above non-sponsored results or in the right-hand column under the Sponsored Sites/Results section:

NFL Concussion Settlement
\$760 million Settlement
benefits retired players & families
<http://www.NFLConcussionSettlement.com>

In re: National Football League Players' Concussion Injury Litigation

EFFECTIVENESS OF NOTICE PLAN

The paid media program outlined in this plan provides Settlement Class Members with multiple exposure opportunities to media vehicles carrying the Notice.

In addition to the paid media, Direct Notice to known Settlement Class Members will increase opportunities to reach the Settlement Class. Also, given the prominence of the NFL and the issues resolved by this Settlement, KM believes that extensive media coverage will result when the Settlement Agreement is filed and made public. This coverage is expected to further increase the reach of the Plan by making unknown Settlement Class Members aware of the Settlement, providing an option to contact the Claims Administrator for more information.

- KM estimates that the Direct Notice, in combination with the Paid Media Placements, will reach over 90% of the Settlement Class Members.

In re: National Football League Players' Concussion Injury Litigation

NOTICE DESIGN

In re: National Football League Players' Concussion Injury Litigation

NOTICE DESIGN:
LONG-FORM NOTICE

The Long-form Notice is compliant with Rule 23 and consistent with the Federal Judicial Center's "illustrative" class action notices. Specifically, the Long-form Notice clearly and concisely states in plain, easily understood language:

- The nature of the action;
- The definition of the settlement class to be finally certified;
- The class claims, issues, or defenses;
- That a settlement class member may enter an appearance through an attorney if the member so desires;
- That the Court will exclude from the settlement class any member who requests exclusion;
- The time and manner for requesting exclusion; and
- The binding effect of a class judgment on members under Rule 23 (c)(3).

The Long-form Notice has been designed to draw attention to all sections, and laid out so that complicated information can be more easily digested. The Long-form Notice will prominently feature a toll-free number and website address for Settlement Class Members to obtain more information and to register to receive benefits after the Settlement becomes effective.

In re: National Football League Players' Concussion Injury Litigation

**NOTICE DESIGN:
SUMMARY NOTICE**

Rule 23(c)(2) of the Federal Rules of Civil Procedure requires notices in 23(b)(3) class actions to be written in "plain, easily understood language." KM applies the plain language requirement in drafting all notices in federal and state class actions. The firm maintains a strong commitment to adhering to the plain language requirement, while drawing on its experience and expertise to draft notices that effectively convey the necessary information to Settlement Class Members.

The plain language Summary Notice (Exhibit 5) is designed to alert Settlement Class Members to the litigation by using a bold headline. This headline will enable Settlement Class Members to quickly determine if they are potentially affected by the litigation. Plain language text provides important information regarding the subject of the litigation, the Settlement Class definition and the legal rights available to Settlement Class Members. The Summary Notice will include all the substantive information required by Rule 23.

Each advertisement will prominently feature a toll-free number and website for Settlement Class Members to obtain the Long-form Notice and other information.

In re: National Football League Players' Concussion Injury Litigation

**NOTICE DESIGN:
RADIO AND TV ADS**

The Radio and Television Spots will be designed to appeal to Settlement Class Members and attract their attention. The audio of the Radio Spot and the visuals of the TV Spot will quickly alert listeners and viewers to the subject matter of the Settlement and help them determine whether they may be potential Settlement Class Members. Both Spots will prominently feature the address of the Settlement Website and toll-free telephone number where Settlement Class Members can obtain more information and register for benefits after the Settlement becomes effective. Both the Radio Spot and the Television Spot will run for 30 seconds.

In re: National Football League Players' Concussion Injury Litigation

NOTICE DESIGN: WEBSITE AND INTERNET ADS

An informational interactive website is a critical component of the Notice Plan. A website is a constant information source instantly accessible to millions. In this case, the Settlement Website will capitalize on the Internet's ability to distribute information and provide access to customer service. Internet banner ads and keyword search ads will help direct Settlement Class Members to the Settlement Website.

WEBSITE DESIGN

Combining clean site design, consistent site navigation cues and search engine optimization, the Settlement Website will provide Settlement Class Members with easy access to the details of the litigation.

- **CLEAN DESIGN:** The site will be designed for ease of navigation and comprehension, with user-friendly words and icons. Clearly labeled content will include the Detailed Notice, court documents, and answers to frequently asked questions. A "Contact Us" page will provide a toll-free number for individuals seeking additional information and the address or email of Co-Lead Class Counsel, Class Counsel, and Subclass Counsel.
- **ONLINE REGISTRATION:** In an effort to make it even easier for Settlement Class Members to receive information and/or register for benefits after the Settlement becomes effective, the Settlement Website will allow users to request hard copies of materials, and/or register online.

INTERNET BANNER AD DESIGN

KM will design Internet advertisements to alert Settlement Class Members to the litigation by using a bold headline. The headline will enable Settlement Class Members to determine quickly if they may be affected by the litigation. When users click on the banner advertisement, they will be connected to the informational website that contains complete information about their legal rights.

In re: National Football League Players' Concussion Injury Litigation

TOLL-FREE TELEPHONE SUPPORT

A toll-free phone information line will be established to service Settlement Class Members calling as a result of seeing the paid media notice or receiving a Long-form Notice in the mail. Live operators will staff the toll-free line call center during business hours. An interactive voice response ("IVR") system will be used to provide answers to frequently asked questions during the hours that the call center will not have live operators. Potential Settlement Class Members will also have the ability to leave their name and telephone number to receive a call back.

In re: National Football League Players' Concussion Injury Litigation

ADDITIONAL OUTREACH OPPORTUNITIES

One important component of the Notice Plan is reaching people who may know Retired NFL Football Players, and asking them to pass along information about the Settlement to those retired players. This may include friends, family members, and potential caregivers of Retired NFL Football Players. KM recommends the following outreach:

DIRECT MAILING TO REST HOMES/NURSING FACILITIES

KM will mail a notice to the directors of approximately 60,000 nursing homes, assisted living facilities, rehab facilities. The mailing will include a cover letter and summary notice requesting their assistance in locating Retired NFL Football Players that are in their facilities.

OUTREACH TO NFL ORGANIZATIONS

KM will reach out to various NFL organizations to request that they inform their members of the Settlement and assist in locating Retired NFL Football Players whose addresses are unknown. This includes outreach to individual team organizations, alumni groups, and the NFL Player Care Foundation.

EXHIBIT 1



Kinsella Media, LLC

Relevant Case Experience

Antitrust

Big Valley Milling, Inc. v. Archer Daniels Midland Co., No. 65-C2-96-000215 (Minn. Dist. Ct. Renville County) (lysine).

Carlson v. Abbott Laboratories, No. 94-CV-002608 (Wis. Cir. Ct. Milwaukee County) (infant formula).

Comes v. Microsoft Corp., No. CL8231 (Iowa Dist. Ct. Polk County)

Connecticut v. Mylan Laboratories, Inc., No. 99-276, MDL No. 1290 (D.D.C.) (pharmaceutical).

Conroy v. 3M Corp., No. C-00-2810 CW (N.D. Cal.) (invisible tape).

Copper Antitrust Litigation, MDL 1303 (W.D. Wis.) (physical copper).

Cox v. Microsoft Corp., No. 105193/00 (N.Y. Sup. Ct. N.Y. County) (software).

D.C. 37 Health & Security Plan v. Medi-Span, No. 07-cv-10988 (D.Mass.); *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, No. 1:05-CV-11148 (D. Mass.) (pharmaceutical).

Ferrell v. Wyeth-Ayerst Laboratories, Ltd., No. C-1-01-447 (S.D. Ohio)

Giral v. Hoffman-LaRoche Ltd., C.A. No. 98 CA 7467 (W. Va. Cir. Ct., Kanawha County) (vitamins).

In re Buspirone Antitrust Litigation, MDL No. 1413 (S.D.N.Y.) (pharmaceutical).

In re Cardizem Antitrust Litigation, 200 F.R.D. 326 (E.D. Mich.) (pharmaceutical).

In re Compact Disc Minimum Price Antitrust Litigation, MDL No. 1361 (D. Me.) (compact discs).

In re Insurance Brokerage Antitrust Litig., MDL No. 1663 Civil No. 04-5184 (FSH) (D.N.J.) (insurance).

In re International Air Transportation Surcharge Antitrust Litigation, No. M 06-1793, MDL No. 1793 (N.D. Cal.) (airline fuel surcharges).

In re Monosodium Glutamate Antitrust Litig., D-0202-CV-0200306168, D-202-CV-200306168 (N.M. Dist. Ct., Bernalillo County) (MSG).

In re Motorsports Merchandise Antitrust Litigation, No. 1:97-CV-2314-TWT (N.D. Ga.) (merchandise).

In re Nasdaq Market-Makers Antitrust Litigation, MDL No. 1023 (S.D.N.Y.) (securities).

In re Pharmaceutical Industry Average Wholesale Price Litigation, No. CA:01-CV-12257, MDL No. 1456 (D. Mass.) (pharmaceutical).

In re Toys "R" Us Antitrust Litigation, No. CV-97-5750, MDL No. 1211, (E.D.N.Y.) (toys and other products).

In re Western States Wholesale Natural Gas Antitrust Litigation, No. CV-03-1431, MDL No. 1566, (D. Nev) (natural gas).

Kelley Supply, Inc. v. Eastman Chemical Co., No. 99CV001528 (Wis. Cir. Ct., Dane County) (Sorbates).

Ohio vs. Bristol-Myers Squibb, Co., No. 1:02-cv-01080 (D.D.C.) (pharmaceutical).

Raz v. Archer Daniels Midland Co., Inc., No. 96-CV-009729 (Wis. Cir. Ct. Milwaukee County) (citric acid).

Consumer and Product Liability

Azizian v. Federated Department Stores, Inc., No. 4:03 CV-03359 (N.D. Cal.) (cosmetics).

Baird v. Thomson Consumer Elecs., No. 00-L-000761 (Ill. Cir. Ct., Madison County) (television).

Bonilla v. Trebol Motors Corp., No. 92-1795 (D.P.R.) (automobiles).

Burch v. American Home Products Corp., No. 97-C-204 (1-11) (W. Va. Cir. Ct., Brooke County) (Fen Phen).

Cosby v. Masonite Corp., No. CV-97-3408 (Ala. Cir. Ct. Mobile County) (siding product); *Quin v. Masonite Corp.*, No. CV-97-3313 (Ala. Cir. Ct. Mobile County) (roofing product).

Cox v. Shell Oil Co., No. 18,844 (Tenn. Ch. Ct. Obion County) (polybutylene pipe).



Daniel v. AON Corp., No. 99 CH 11893 (Ill. Cir. Ct. Cook County) (insurance).

Fettke v. McDonald's Corp., No. 044109 (Cal. Super Ct. Marin County) (trans fatty acids).

Florida v. Nine West Group, Inc., No. 00 CIV 1707 (S.D.N.Y.) (shoes).

Foothill/De Anza Community College Dist. v. Northwest Pipe Co., No. 00-20749-JF(N.D. Cal.) (fire sprinklers).

Galanti v. The Goodyear Tire & Rubber Company, No. 03-209 (D.N.J.) (radiant heating) (2002).

Garza v. Sporting Goods Properties, Inc., No. SA 93-CA-1082 (W.D. Tex.) (gun ammunition).

Government Employees Hospital Association v. Serono International, No. 5-11935 (D. Mass.), and
Francis v. Serono Laboratories, Inc., No. 6-10613 (D. Mass.).

Hoorman v. GlaxoSmithKline, No. 04-L-715 (Ill. Cir. Ct., Madison Cty.) (Paxil pharmaceutical).

In re Louisiana Pacific Corp. Inner Seal OSB Trade Practices Litigation, MDL No. 1114 (N.D. Cal.) (oriented strand board).

In re Tri-State Crematory Litig, MDL 1467 (N.D. Ga.) (improper burial).

Lebrilla v. Farmers Group Inc., No. 00-CC-07185 (Cal. Super. Ct., Orange County) (auto insurance).

Lovelis v. Titflex, No. 04-211 (Ak. Cir. Ct., Clark County) (gas transmission pipe).

Naef v. Masonite Corp., No. CV-94-4033 (Ala. Cir. Ct. Mobile County) (hardboard siding product).

Peterson v. BASF Corp., No. C2-97-295 (D. Minn.) (herbicide).

Posey v. Dryvit Sys., Inc. No. 17,715-IV (Tenn. Cir. Ct., Jefferson County) (EIFS stucco).

Reiff v. Epson America, Inc. and Latham v. Epson Am., Inc., J.C.C.P. No. 4347 (Cal. Super. Ct., L.A. County) (ink jet printers).

Richison v. Weyerhaeuser Company Limited, No. 05532 (Cal. Super. Ct. San Joaquin County) (roofing product).

Ruff v. Parex, Inc., No. 96-CvS 0059 (N.C. Super. Ct. Hanover County) (synthetic stucco product).



Shah v. Re-Con Building Products, Inc., No. C99-02919 (Cal. Super. Ct. Contra Costa County) (roofing product).

Shields vs. Bridgestone/Firestone, Inc., Bridgestone Corp., No. E-167.637 (D. Tex.) (tires).

Smith v. Behr Process Corp., No. 98-2-00635 (Wash. Super. Ct., Gray Harbor County) (stain product).

Weiner v. Cal-Shake, Inc., J.C.C.P. No. 4208 (Cal. Super. Ct., Contra Costa County) (roofing product).

Wholesale Elec. Antitrust Cases I & II, J.C.C.P. Nos. 4204 & 4205 (Cal. Super. Ct., San Diego County) (energy).

Woosley v. State of California, No. CA 000499 (Cal. Super. Ct., Los Angeles County) (automobiles).

Mass Tort

Ahearn v. Fibreboard Corp., No. 6:93cv526 (E.D. Tex); *Continental Casualty Co. v. Rudd*, No. 6:94cv458 (E.D. Tex) (asbestos injury).

Backstrom v. The Methodist Hospital, No. H-94-1877 (S.D. Tex.) (TMJ injury).

Engle v. RJ Reynolds Tobacco Co., No. 94-08273 (Fla. Cir. Ct. Dade County) (tobacco injury).

Georgine v. Amchem, Inc., No. 93-CV-0215 (E.D. Pa.) (asbestos injury).

Bankruptcies

In re Armstrong World Industries, Inc., No. 00-4471 (Bankr. D. Del.).

In re Dow Corning, No. 95-20512 (Bankr. E.D. Mich.) (breast implants).

In re Johns-Manville Corp., 68 B.R. 618, 626 (Bankr. S.D.N.Y.) (asbestos).

In re Kaiser Aluminum Corp., No. 02-10429 (JFK) (D. Del.).

In re Owens Corning, No. 00-03837 (Bankr. D. Del.).

In re Raytech Corp., No. 5-89-00293 (Bankr. D. Conn.) (asbestos).

In re The Celotex Corp., Nos. 90-10016-8B1 and 90-10017-8B1 (Bankr. M.D. Fla.) (asbestos).



In re U.S. Brass Corp., No.94-40823S (Bankr. E.D. Tex.) (polybutylene).

In re USG Corp., Nos. 01-2094 - 01-2104 (Bankr. D. Del.).

In re W.R. Grace & Co., No. 01-01139 (Bankr. D. Del.).

Insurance

McNeil v. American General Life and Accident Insurance Co., No. 8-99-1157 (M.D. Tenn.) (insurance).

Nealy v. Woodmen of the World Life Insurance Co., No. 3:93 CV-536 (S.D. Miss.) (insurance).

Holocaust Victims Reparations

In re Holocaust Victim Assets Litigation, Nos. CV 96-4849, CV-5161 and CV 97-461 (E.D.N.Y.) (Holocaust).

The International Commission on Holocaust Era Insurance Claims Outreach

Pension Benefits

Collins v. Pension Benefit Guarantee Corp., No. 88-3406 (D.D.C.); *Page v. Pension Benefit Guarantee Corp.*, No. 89-2997 (D.D.C.).

Forbush v. J. C. Penney Co., Inc., Nos. 3:90-2719 and 3:92-0109 (N.D. Tex.).

International

Ahearn v. Fiberboard Corporation, No. 6:93cv526 (E.D. Tex) and *Continental Casualty Co. v. Rudd*, No. 6:94cv458 (E.D. Tex.) (asbestos injury) (1993).

Galanti v. The Goodyear Tire & Rubber Company, No. 03-209 (D.N.J.) (radiant heating) (2002).

In re Holocaust Victims Assets Litigation, No. CV 96-4849 (ERK) (MDG) (Consolidated with CV-5161 and CV 97461) (E.D.N.Y.) (2003).

In re Owens Corning, Chapter 11, No. 00-03837 (MFW) (Bankr. D. Del.) (2006).

In re The Celotex Corporation, Chapter 11, Nos. 90-10016-8B1 and 90-10017-8B1 (Bankr. M.D. Fla.) (1996).



In re USG Corporation, Chapter 11, Nos. 01-2094 (RJN) through 01-2104(RJN) (Bankr. D. Del.) (2006).

In re W.R. Grace & Co., Chapter 11, No. 01-01139 (Bankr. D. Del.) (bankruptcy) (2001).

In re Western Union Money Transfer Litigation, No. 01 0335 (CPS) (VVP) (E.D.N.Y.) (wire transactions) (2004).

International Committee on Holocaust Era Insurance Claims (1999).

Product Recall

Central Sprinkler Voluntary Omega Sprinkler Replacement Program

Hart v. Central Sprinkler Corp., No. BC17627 (Cal. Super. Ct. Los Angeles County) & *County of Santa Clara v. Central Sprinkler Corp.*, No. CV 17710119 (Cal. Super. Ct. Santa Clara County)

Telecom

Bidner, et al. v. LCI International Telecom Corp d/b/a Qwest Communications.

Community Health Association v. Lucent Technologies, Inc., No. 99-C-237, (W.Va. Cir. Ct., Kanawha County).

Cundiff et al. v. Verizon California, Inc., No. 237806 (Cal. Super Ct., Los Angeles County).

Kushner v. AT&T Corporation, No. GIC 795315 (Cal. Super. Ct., San Diego County).

Rish Enterprise v. Verizon New Jersey, No. MID-L-8946-02 (N.J. Super. Ct.).

Sonnier, et. al. v. Radiofone, Inc., No. 44-844, (L.A. Jud. Dist. Ct., Plaqueimes Parish County).

State of Louisiana v. Sprint Communications Company L.P., No. 26,334 (Jud. Dis. Ct., Parish of West Baton Rouge) and *State of Louisiana v. WilTel, Inc.*, No. 26,304 (Jud. Dis. Ct., Parish of West Baton Rouge).

Other

Cobell v. Salazar, No. 96-01285 (D.D.C.) (Individual Indian Money accounts).

Dryer v. National Football League, No. 9-02182 (D. Minn.) (publicity rights).



In re Black Farmers Discrimination Litigation, No. 08-511 (D.D.C.) (African American farm loans).

Keepseagle v. Vilsack, No. 99-03119 (D.D.C.) (Native American farm loans).



EXHIBIT 2



Kinsella Media, LLC

Judicial Comments

Ahearn v. Fibreboard Corp., No. 6:93 cv526 (E.D. Tex.); *Continental Casualty Co. v. Rudd*, No. 6:94cv458 (E.D. Tex.).

In approving the notice plan for implementation in the Ahearn and Rudd class actions in 1994, Judge Parker stated, "I have reviewed the plan of dissemination, and I have compared them to my knowledge at least of similar cases, the notices that Judge Weinstein has worked with [Agent Orange] and Judge Pointer [Silicon Gel Breast Implants], and it appears to be clearly superior." - Chief Judge Robert M. Parker (1994)

Azizian v. Federated Department Stores, Inc., No. 3:03 CV-03359 (N.D. Cal.).

"The notice was reasonable and the best notice practicable under the circumstances; was due, adequate and sufficient notice to all class members; and complied fully with the laws of the United States and of the Federal Rules for Civil Procedure, due process and any other applicable rules of court." - Hon. Sandra Brown Armstrong (2004)

Collins v. Pension Benefit Guarantee Corp., No. 88-3406 (D.D.C.).

"The notice provided was the best notice practicable under the circumstances. Indeed, the record shows that the notice given was consistent with the highest standards of compliance with Rule 23(e)." (1996)

Cox v. Microsoft Corporation, No. 105193/00 (N.Y. Sup. Ct. N.Y. County).

"The court finds that the combination of individual mailing, e-mail, website and publication notice in this action is the most effective and best notice practicable under all the circumstances, constitutes due, adequate and reasonable notice to all Class members and otherwise satisfies the requirements of CPLR 904, 908 and other applicable rules. The Settlement meets the due process requirement for class actions by providing Class members an opportunity either to be heard and participate in the litigation or to remove themselves from the Class." - Hon. Karla Moskowitz (2006)

Cox v. Shell Oil Co., No. 95-CV-2 (Tenn. Ch. Ct. Obion County)

In the order approving the settlement of the polybutylene pipe class action, Judge Maloan stated, "The Court finds the notice program is excellent. As specified in the findings below, the evidence supports the conclusion that the notice program is one of the most comprehensive class notice campaigns ever undertaken." (1995)

Foothill/De Anza Community College District v. Northwest Pipe Co., No. CV-00-20749 (N.D. Cal.)

"The Court finds that the settling parties undertook a thorough and extensive notice campaign designed by Kinsella/Novak Communications, Ltd., a nationally-recognized expert in this specialized field. The Court finds and concludes that the Notice Program as designed and implemented provides the best practicable notice to the Class, and satisfied requirements of due process." - Hon. Jeremy Fogel (2004)

Galanti v. The Goodyear Tire & Rubber Co., No. 03-209 (D.N.J.)

"The published notice, direct notice and Internet posting constituted the best practicable notice of the Fairness Hearing, the proposed Amended Agreement, Class Counsels' application for fees, expenses and costs, and other matters set forth in the Class Notice and the Summary Notice. The notice constituted valid, due and sufficient notice to all members of the Settlement Classes, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, the laws of New Jersey and any other applicable law." – Hon. Stanley R. Chesler (2004)

Georgine v. Amchem, 158 F.R.D. 314, 326 (E.D. Pa.).

Judge Reed explained that the notice program developed by Kinsella "goes beyond that provided in [previous cases]" and "the efforts here are more than adequate to meet the requirements of Rule 23(c)(2)." (1993)

Higgins v. Archer-Daniels Midland Co., Second Judicial District Court, County of Bernalillo C-202-CV-200306168 (N.M. 2d Jud. Dist. Bernalillo County)

"The Court finds that the form and method of notice given to the Settlement Class, including both mailed notice to persons and firms for whom such notice was practical and extensive notice by publication through multiple national and specialized publications, complied with the requirements of Rule 1-023 NMRA 2006, satisfied the requirements of due process, was the best notice practicable under the circumstances, and constituted due and sufficient notice of the Settlement Agreements and their Final Approval Hearing, and other matters referred to in the Notice. The notice given to the Settlement Class was reasonably calculated under the circumstances to inform them of the pendency of the actions involved in this case, of all material elements of the proposed Settlements, and of their opportunity to exclude themselves from, object to, or comment on the Settlements and to appear at the Final Approval Hearing." -Hon. William F. Lang (2006)

In re Compact Disc Minimum Advertised Price Antitrust Litigation, MDL No. 1361 (D. Me.),

In approving the notice plan for implementation in the Compact Disc Minimum Advertised Price Antitrust Litigation, Judge D. Brock Hornby stated, "(the plan) provided the best practicable notice under the circumstances and complied with the requirements of both 15 U.S.C. 15c(b) (1) . . . the



notice distribution was excellently designed, reasonably calculated to reach potential class members, and ultimately highly successful in doing so." - Hon. D. Brock Hornby (2002/2003)

In re International Air Transportation Surcharge Antitrust Litigation, No. M 06-1793, MDL No. 1793 (N.D. Cal.).

In approving the notice plan in this litigation that involved a proposed settlement of more than \$200 million for U.S. and U.K. class members, U.S. District Judge Charles Breyer repeatedly praised KNC: "I think the notice is remarkable in this case. . . . This is brilliant. This is the best notice I've seen since I've been on the bench. . . . Turning back to the settlement, again I want to applaud the parties for the notice. I mean it's amazing. You know, it really is good. And I don't know where this person practices, I don't even know that she's a lawyer. But she really did a good job on this announcement, this notice. So thank you very much. . . . And I once again want to express my sincere appreciation of the notice. I mean, I was just extraordinarily impressed. Extraordinarily impressed." – Hon. Charles Breyer (2008)

In re The Celotex Corporation, Nos. 90-10016-8B1 and 90-10017-8B1 (Bankr. M.D. Fla.).

"...all counsel should be complimented on the fact that they have gone to every possible conceivable method of giving notice from putting it on TV and advertising it in papers.... the record should also reflect the Court's appreciation to Ms. Kinsella for all the work she's done, not only in pure noticing, but ensuring that what noticing we did was done correctly and professionally." - Hon. Thomas E. Baynes, Jr.

In re Western States Wholesale Natural Gas Antitrust Litigation, No. CV-03-1431, MDL No. 1566, (D. Nev) (natural gas).

"This notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process. It provided to the MDL Class the best notice practicable under the circumstances." - Hon. Philip M. Pro (2007)

Johns-Manville Corp. 68 B.R. 618, 626 (Bankr. S.D.N.Y. 1986), aff'd, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom. *Kane v. Johns-Manville Corp.* 843 F.2d. 636 (2d Cir. 1988).

In approving the notification plan in the Johns-Manville Bankruptcy Reorganization, the court referred to it as "an extensive campaign designed to provide the maximum amount of publicity ... that was reasonable to expect of man and media." - Hon. Burton Lifland (1996/1998)

Lovelis v. Titeflex Corp., No. CIV-2004-211 (Ark. 9th Cir. Ct. Clark Co.)

"Accordingly, the Notice as disseminated is finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency



of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the Notice campaign described in the Preliminary Approval Order and completed by the Parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions. The Court further finds that the Notice campaign undertaken concisely and clearly states in plain, easily understood language:

- (a.) the nature of the action;
- (b.) the definition of the class certified;
- (c.) the class claims, issues or defenses;
- (d.) that a Class Member may enter an appearance and participate in person or through counsel if the member so desires;
- (e.) that the Court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and
- (f.) the binding effect of the Final Order and Judgment on Class Members.

- Hon. John A. Thomas

Naef v. Masonite Corp., No. CV-94-4033 (Ala. Cir. Ct. Mobile County)

“In November, 1997, the Court approved a massive Notice Program to apprise class members of the class action Settlement, including the individually mailed, notices, publication notice and notification by way of other avenues nationally and locally. This Notice Program was designed by recognized experts, approved by the mediator and the Court, and implemented diligently by the parties, at defendants’ cost. It provided the best notice practicable to the Class, comports with due process, and was clearly adequate under Alabama Rule of Civil Procedure 23(e), the United States Constitution, and other applicable law.” - Hon. Robert G. Kendall (1997)

Keepseagle v. Vilsack, No. 99-3119 (D.D.C.)

“I’m not going to review in detail the exhaustive notice plan created and implemented by Plaintiffs’ counsel at this time. For those interested, I invite you to examine the several motions on the docket relating to notice with affidavits from Kinsella Media, who class counsel have hired as Notice Administrators.” – Hon. Emmet G. Sullivan (2011)

“In my view, the notice program was excellent and it persuades the Court that the parties worked extremely hard to notify the entire class about the settlement so that as many class members as possible can obtain monetary and other relief under the settlement.” – Hon. Emmet G. Sullivan (2011)



EXHIBIT 3

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

\$760 Million NFL Concussion Litigation Settlement

Retired NFL Football Players May Be Eligible for Money and Medical Benefits

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The National Football League (“NFL”) and NFL Properties LLC (collectively, “NFL Parties”) have agreed to a \$760 million Settlement of a class action lawsuit seeking medical monitoring and compensation for brain injuries allegedly caused by head impacts experienced in NFL football. The NFL Parties deny that they did anything wrong.
- The Settlement includes all retired players of the NFL, the American Football League (“AFL”) that merged with the NFL, the World League of American Football, NFL Europe League, and NFL Europa League, as well as immediate family members of retired players and legal representatives of incapacitated, incompetent or deceased retired players.
- The Settlement will provide eligible retired players with:
 - Baseline neuropsychological and neurological exams to determine if retired players are: a) currently suffering from any neurocognitive impairment, including impairment serious enough for compensation, and b) eligible for additional testing and/or treatment (\$75 million);
 - Monetary awards for diagnoses of ALS (Lou Gehrig’s disease), Parkinson’s Disease, Alzheimer’s Disease, early and moderate Dementia and certain cases of chronic traumatic encephalopathy (CTE) (a neuropathological finding) diagnosed after death (\$675 million); and
 - Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives (\$10 million).
- To get money, proof that injuries were caused by playing NFL football is not required.
- **Settlement Class Members must register to get benefits. Sign up at the website for notification of the registration date.**
- Your legal rights are affected even if you do nothing. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
STAY IN THE SETTLEMENT CLASS	You do not need to do anything to be included in the Settlement Class. However, once the Court approves the Settlement, you will be bound by the terms and releases contained in the Settlement. There will be later notice to explain when and how to register for Settlement benefits (<i>see Question 26</i>).
ASK TO BE EXCLUDED	You will get no benefits from the Settlement if you exclude yourself (“opt-out”) from the Settlement. Excluding yourself is the only option that allows you to participate in any other lawsuit against the NFL Parties about the claims in this case (<i>see Question 30</i>).
OBJECT	Write to the Court if you do not like the Settlement (<i>see Question 35</i>). Ask to speak in Court about the fairness of the Settlement at the final approval hearing (<i>see Question 39</i>).

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- The Court in charge of this case still has to decide whether to approve the Settlement.
- **This Notice is only a summary of the Settlement Agreement and your rights. You are encouraged to carefully review the complete Settlement Agreement at www.NFLConcussionSettlement.com.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

What This Notice Contains

CHAPTER 1: INTRODUCTION

BASIC INFORMATION.....	Page 5
1. Why is this Notice being provided?	
2. What is the litigation about?	
3. What is a class action?	
4. Why is there a Settlement?	
5. What are the benefits of the Settlement?	

WHO IS PART OF THE SETTLEMENT?	Page 7
6. Who is included in the Settlement Class?	
7. What players are not included in the Settlement Class?	
8. What if I am not sure whether I am included in the Settlement Class?	
9. What are the different levels of neurocognitive impairment?	
10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?	

CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM.....	Page 9
11. What is the Baseline Assessment Program (“BAP”)?	
12. Why should I get a BAP baseline examination?	
13. How do I schedule a baseline assessment examination and where can I get it done?	

MONETARY AWARDS.....	Page 10
14. What diagnoses qualify for monetary awards?	
15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?	
16. How much money will I receive?	
17. How does the age of the retired player at the time of first diagnosis affect his monetary award?	
18. How does the number of seasons a retired player played affect his monetary award?	
19. How do prior strokes or brain injuries of a retired player affect his monetary award?	
20. How is a retired player’s monetary award affected if he does not participate in the BAP program?	
21. Can I receive a monetary award even though the retired player is dead?	
22. Will this Settlement affect my participation in NFL or NFLPA related benefits programs?	
23. Will this Settlement prevent me from bringing workers’ compensation claims?	

EDUCATION FUND.....	Page 14
24. What type of education programs are supported by the Settlement?	

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT.....	Page 14
25. What am I giving up to stay in the Settlement Class?	

HOW TO GET BENEFITS.....	Page 15
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QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

26. How do I get Settlement benefits?
27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?
28. Can I re-apply for compensation if my claim is denied?
29. Can I appeal the determination of my monetary award claim?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....Page 15

30. How do I get out of the Settlement?
31. If I do not exclude myself, can I sue the NFL Parties for the same thing later?
32. If I exclude myself, can I still get benefits from this Settlement?

THE LAWYERS REPRESENTING YOU.....Page 16

33. Do I have a lawyer in the case?
34. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....Page 17

35. How do I tell the Court if I do not like the Settlement?
36. What is the difference between objecting to the Settlement and excluding myself?

THE COURT'S FAIRNESS HEARING.....Page 18

37. When and where will the Court decide whether to approve the Settlement?
38. Do I have to attend the hearing?
39. May I speak at the hearing?

GETTING MORE INFORMATION.....Page 19

40. How do I get more information?

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 1: INTRODUCTION

BASIC INFORMATION

1. Why is this Notice being provided?

The Court in charge of this case authorized this Notice because you have a right to know about the proposed Settlement of this lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This Notice summarizes the Settlement and explains your legal rights and options.

Judge Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania is overseeing this case. The case is known as *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323. The people who sued are called the "Plaintiffs." The National Football League and NFL Properties LLC are called the "NFL Defendants."

The Settlement may affect your rights if you are: (a) a retired player of the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League, (b) an authorized representative of a deceased or legally incapacitated or incompetent retired player of those leagues, or (c) an individual with a close legal relationship with a retired player of those leagues, such as a spouse, parent or child.

2. What is the litigation about?

The Plaintiffs claim that retired players experienced head trauma during their NFL football playing careers that resulted in brain injuries, which have caused or may cause them long-term neurological problems. The Plaintiffs accuse the NFL Parties of being aware of the evidence and the risks associated with repetitive traumatic brain injuries but failing to warn and protect the players against the long-term risks, and ignoring and concealing this information from the players. The NFL Parties deny the claims in the litigation.

3. What is a class action?

In a class action, one or more people, the named plaintiffs (who are also called proposed "class representatives") sue on behalf of themselves and other people with similar claims. All of these people together are the proposed "class" or "class members." When a class action is settled, one court resolves the issues for all class members (in the settlement context, "settlement class members"), except for those who exclude themselves from the settlement. In this case, the proposed class representatives are Kevin Turner and Shawn Wooden. Excluding yourself means that you will not receive any benefits from the Settlement. The process for excluding yourself is described in Question 30 of this Notice.

4. Why is there a Settlement?

After extensive settlement negotiations mediated by retired United States District Court Judge Layn Phillips, the Plaintiffs and the NFL Parties agreed to the Settlement.

A settlement is an agreement between a plaintiff and a defendant to resolve a lawsuit. Settlements conclude litigation without the court or a jury ruling in favor of the plaintiff or the defendant. A settlement allows the parties to avoid the cost and risk of a trial, as well as the delays of litigation.

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If the Court approves this Settlement, the claims of all persons affected (*see Question 6*) and the litigation between these persons and the NFL Parties are over. The persons affected by the Settlement are eligible for the benefits summarized in this Notice and the NFL Parties will no longer be legally responsible to defend against the claims made in this litigation.

The Court has not and will not decide in favor of the retired players or the other persons affected by the Settlement or the NFL Parties, and by reviewing this Settlement the Court is not making and will not make any findings that any law was broken or that the NFL Parties did anything wrong.

The proposed Class Representatives and their lawyers (“Co-Lead Class Counsel,” “Class Counsel,” and “Subclass Counsel,” *see Question 33*) believe that the proposed Settlement is best for everyone who is affected. The factors that Co-Lead Class Counsel, Class Counsel, and Subclass Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal issues that are yet to be determined by the Court. Co-Lead Class Counsel, Class Counsel and Subclass Counsel balanced these and other substantial risks in determining that the Settlement is fair, reasonable and adequate in light of all circumstances and in the best interests of the Settlement Class Members.

The Settlement Agreement is available at www.NFLConcussionSettlement.com.

15. What are the benefits of the Settlement?

Under the Settlement, the NFL Parties will pay \$760 million to fund:

- Baseline neuropsychological and neurological examinations for eligible retired players, and additional medical testing, counseling and/or treatment if they are diagnosed with moderate cognitive impairment during the baseline examinations (up to \$75 million, “Baseline Assessment Program”) (*see Questions 11-13*);
- Monetary awards for diagnoses of ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) and Death with CTE prior to [Date of Preliminary Approval Order] (\$675 million, “Monetary Award Fund”) (*see Questions 14-21*); and
- Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives. (\$10 million) (*see Question 24*).

In addition, the NFL Parties will pay the cost of notice (up to \$4 million) and half of the compensation for a Special Master to assist the Court in overseeing aspects of the Settlement, for the first 5 years of the Settlement. The Court may extend the term for the Special Master. Other administrative costs and expenses will be paid out of the Monetary Award Fund, except for Baseline Assessment Program costs and expenses, which will be paid out of the Baseline Assessment Program Fund.

In the event the Monetary Award Fund is insufficient to pay all approved monetary claims, the NFL Parties have agreed to contribute up to an additional \$37.5 million, subject to Court approval. Based on extensive consultation with economic and medical experts, Co-Lead Class Counsel, Class Counsel, and Subclass Counsel believe the funding will be sufficient to pay all eligible monetary claims.

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The details of the Settlement benefits are in the Settlement Agreement, which is available at www.NFLConcussionSettlement.com.

Note: The Baseline Assessment Program and Monetary Award Fund are completely independent of the NFL Parties and any benefit programs that have been created between the NFL and the NFL Players Association. The NFL Parties are not involved in determining the validity of claims.

WHO IS PART OF THE SETTLEMENT?

You need to decide whether you are included in the Settlement.

6. Who is included in the Settlement Class?

This Settlement Class includes three types of people:

Retired NFL Football Players: Prior to [Date of Preliminary Approval Order], you (1) have retired, formally or informally, from playing professional football with the NFL or any Member Club, including AFL, World League of American Football, NFL Europe League, and NFL Europa League players, or (2) were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and no longer are under contract to a Member Club and are not seeking active employment as a player with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

Representative Claimants: An authorized representative, ordered by a court or other official of competent jurisdiction under applicable state law, of a deceased or legally incapacitated or incompetent Retired NFL Football Player.

Derivative Claimants: A spouse, parent, dependent child, or any other person who properly under applicable state law asserts the right to sue independently or derivatively by reason of his or her relationship with a living or deceased Retired NFL Football Player. (For example, a spouse asserting the right to sue due to the injury of a husband who is a Retired NFL Football Player.)

The Settlement recognizes two separate groups (“Subclasses”) of Settlement Class Members based on the Retired NFL Football Player’s injury status as of [Date of Preliminary Approval Order]:

- **Subclass 1** includes Retired NFL Football Players who were not diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) or Death with CTE prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants.
- **Subclass 2** includes:
 - (a) Retired NFL Football Players who were diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants; and

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- (b) Representative Claimants of deceased Retired NFL Football Players who were diagnosed with ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to death or who died prior to [Date of Preliminary Approval Order] and received a diagnosis of Death with CTE.

7. What players are not included in the Settlement Class?

The Settlement Class does not include: (a) current NFL players, and (b) people who tried out for NFL or AFL Member Clubs, or World League of American Football, NFL Europe League or NFL Europa League teams, but did not make it onto preseason, regular season or postseason rosters, or practice squads, developmental squads or taxi squads.

8. What if I am not sure whether I am included in the Settlement Class?

If you are not sure whether you are included in the Settlement Class, you may call 1-800-000-0000 with questions or visit www.NFLConcussionSettlement.com. You may also write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000. You may also consult with your own attorney.

9. What are the different levels of neurocognitive impairment?

Various levels of neurocognitive impairment are used in this Notice. More details can be found in the Injury Definitions, which are available at www.NFLConcussionSettlement.com or by calling 1-800-000-0000.

- **Level 1 Neurocognitive Impairment** covers ***moderate cognitive impairment***. It will be established in part with evidence of decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- **Level 1.5 Neurocognitive Impairment** covers ***early Dementia***. It will be established in part with evidence of moderate to severe cognitive decline, which includes a decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- **Level 2 Neurocognitive Impairment** covers ***moderate Dementia***. It will be established in part with evidence of severe decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.

If neurocognitive impairment is temporary and only occurs with delirium, or as a result of substance abuse or medicinal side effects, it is not covered by the Settlement.

10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?

No. A retired player can be a Settlement Class Member regardless of whether he is vested due to credited seasons or total and permanent disability under the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

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CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM

11. What is the Baseline Assessment Program (“BAP”)?

All living retired players who have earned at least one-half of an Eligible Season (*see* Question 18), who do not exclude themselves from the Settlement (*see* Question 30), and who timely register to participate in the Settlement (*see* Question 26) may participate in the Baseline Assessment Program (“BAP”).

The BAP will provide baseline neuropsychological and neurological assessment examinations to determine whether retired players are currently suffering from cognitive impairment. Retired players will have from two to ten years, depending on their age as of the date the Settlement is finally approved and any appeals are fully resolved, to have a baseline examination conducted through a nationwide network of qualified and independent medical providers.

- Retired players 43 or older as of the date the Settlement goes into effect will need to have a baseline examination within two years of the start of the program.
- Retired players under the age of 43 as of the date the Settlement goes into effect will need to have a baseline examination within 10 years, or before they turn 45, whichever comes sooner.

Retired players who are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment) are eligible to receive further medical testing and/or treatment (including counseling and pharmaceuticals) for that condition for the ten-year term of the BAP or five years from diagnosis, whichever is longer.

Settlement Class Members who participate in the BAP will be encouraged to provide their confidential medical records for use in research into cognitive impairment and safety and injury prevention with respect to football players.

Although all retired players are encouraged to take advantage of the BAP and receive a baseline examination, you do not need to participate in the BAP to receive a monetary award, but your award may be reduced by 10% if you do not participate in the BAP, as explained in more detail in Question 20.

12. Why should I get a BAP baseline examination?

Getting a BAP baseline examination will be beneficial to you and your family. It will determine whether you have any cognitive impairment, and if you are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment), you are eligible to receive further medical testing and/or treatment for that condition. In addition, whether or not you have any cognitive impairment today, the results of the BAP baseline examination can be used as a comparison to measure any subsequent deterioration of your cognitive condition over the course of your life. Participants also will be examined by at least two experts during the BAP baseline examinations, a neuropsychologist and a neurologist, and the retired player and/or

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his family members will have the opportunity to ask questions relating to any cognitive impairment during those examinations.

Participation in the BAP does not prevent you from filing a claim for a monetary award. For the next 65 years, retired players will be eligible for compensation paid from the Monetary Award Fund if they develop a Qualifying Diagnosis (*see Question 14*). Participation in the BAP also will help ensure that, to the extent you receive a Qualifying Diagnosis in the future, you receive the maximum monetary award to which you are entitled (*see Question 20*).

[13. How do I schedule a baseline assessment examination and where can I get it done?]

You need to register for Settlement benefits before you can get a baseline assessment examination. Registration will not be available until after the Court grants final approval to the Settlement and any appeals are fully resolved. **You can sign-up at www.NFLConcussionSettlement.com or by calling 1-800-000-0000 to receive additional notice about registration when it becomes available.**

The BAP Administrator will send notice to those retired players determined during registration to be eligible for the BAP, explaining how to arrange for an initial baseline assessment examination. The BAP will use a nationwide network of qualified and independent medical providers who will provide both the initial baseline assessment as well as any further testing and/or treatment. The BAP Administrator, which will be appointed by the Court, will establish the network of medical providers.

MONETARY AWARDS

[14. What diagnoses qualify for monetary awards?]

Monetary awards are available for the diagnosis of ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia), or Death with CTE (the "Qualifying Diagnoses"). A Qualifying Diagnosis can occur at any time until the end of the 65-year term of the Monetary Award Fund.

If a retired player receives a monetary award based on a Qualifying Diagnosis, and later is diagnosed with a different Qualifying Diagnosis that entitles him to a larger monetary award than his previous award, he will be eligible for an increase in compensation.

[15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?]

No. You do not need to prove that a Qualifying Diagnosis was caused by playing professional football or that you experienced head injuries in the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League in order to receive a monetary award. The fact that a retired player receives a Qualifying Diagnosis is sufficient to be eligible for a monetary award.

You also do not need to exclude the possibility that the Qualifying Diagnosis was caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.

[16. How much money will I receive?]

The amount of money you will receive depends on the retired player's:

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- Specific Qualifying Diagnosis,
- Age at the time he was diagnosed (*see Question 17*),
- Number of seasons played or practiced in the NFL or the AFL (*see Question 18*),
- Diagnosis of a prior stroke or traumatic brain injury (*see Question 19*),
- Participation in a baseline assessment exam (*see Question 20*), and
- Whether there are any legally enforceable liens on your award.

The table below lists the maximum amount of money available for each Qualifying Diagnosis before any adjustments are made.

QUALIFYING DIAGNOSIS	MAXIMUM AWARD AVAILABLE
Amyotrophic lateral sclerosis (ALS)	\$5 million
Death with CTE (diagnosed after death)	\$4 million
Parkinson's Disease	\$3.5 million
Alzheimer's Disease	\$3.5 million
Level 2 Neurocognitive Impairment (<i>i.e.</i> , moderate Dementia)	\$3 million
Level 1.5 Neurocognitive Impairment (<i>i.e.</i> , early Dementia)	\$1.5 million

Monetary awards may be increased up to 2.5% per year during the 65-year Monetary Award Fund term for inflation.

To receive the maximum amount outlined in the table, a retired player must have played for at least five Eligible Seasons (*see Question 18*) and have been diagnosed when younger than 45 years old.

Derivative Claimants are eligible to be compensated from the monetary award of the retired player with whom they have a close relationship in an amount of 1% of that award. If there are multiple Derivative Claimants for the same retired player, the 1% award will be divided among the Derivative Claimants according to the law where the retired player (or his Representative Claimant, if any) resides.

17. How does the age of the retired player at the time of first diagnosis affect his monetary award?

Awards are reduced for retired players who were 45 or older when diagnosed. The younger a retired player is at the time of diagnosis, the greater the award he will receive. Setting aside the other downward adjustments to monetary awards, the table below provides:

- The average award for people diagnosed between the ages of 45-49; and
- The amount of the award for those under age 45 and over 79.

The actual amount will be determined based on each retired player's actual age at the time of diagnosis and on other potential adjustments.

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AGE AT DIAGNOSIS	ALS	DEATH W/CTE	PARKINSON'S	ALZHEIMER'S	LEVEL 2	LEVEL 1.5
Under 45	\$5,000,000	\$4,000,000	\$3,500,000	\$3,500,000	\$3,000,000	\$1,500,000
45 - 49	\$4,500,000	\$3,200,000	\$2,470,000	\$2,300,000	\$1,900,000	\$950,000
50 - 54	\$4,000,000	\$2,300,000	\$1,900,000	\$1,600,000	\$1,200,000	\$600,000
55 - 59	\$3,500,000	\$1,400,000	\$1,300,000	\$1,150,000	\$950,000	\$475,000
60 - 64	\$3,000,000	\$1,200,000	\$1,000,000	\$950,000	\$580,000	\$290,000
65 - 69	\$2,500,000	\$980,000	\$760,000	\$620,000	\$380,000	\$190,000
70 - 74	\$1,750,000	\$600,000	\$475,000	\$380,000	\$210,000	\$105,000
75 - 79	\$1,000,000	\$160,000	\$145,000	\$130,000	\$80,000	\$40,000
80+	\$300,000	\$50,000	\$50,000	\$50,000	\$50,000	\$25,000

Note: The age of the retired player at diagnosis (not the age when applying for a monetary award) is used to determine the monetary amount awarded.

18. How does the number of seasons a retired player played affect his monetary award?

Awards are reduced for retired players who played less than five “Eligible Seasons.” The Settlement uses the term “Eligible Season” to count the seasons in which a retired player played or practiced in the NFL or AFL. A retired player earns an Eligible Season for:

- Each season where he was on an NFL or AFL Member Club’s “Active List” for either three or more regular season or postseason games, or
- Where he was on an Active List for one or more regular or postseason games and then spent two regular or postseason games on an injured reserve list or inactive list due to a concussion or head injury.
- A retired player also earns one-half of an Eligible Season for each season where he was on an NFL or AFL Member Club’s practice, developmental, or taxi squad for at least eight games, but did not otherwise earn an Eligible Season.

The “Active List” means the list of all players physically present, eligible and under contract to play for an NFL or AFL Member Club on a particular game day within any applicable roster or squad limits in the applicable NFL or AFL Constitution and Bylaws.

Time spent playing or practicing in the World League of American Football, NFL Europe League, and NFL Europa League does not count towards an Eligible Season.

The table below lists the reductions to a retired player’s (or his Representative Claimant’s) monetary award if the retired player has less than five Eligible Seasons. To determine the total number of Eligible Seasons

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credited to a retired player, add together all of the earned Eligible Seasons and half Eligible Seasons. For example, if a retired player earned two Eligible Seasons and three half Eligible Seasons, he will be credited with 3.5 Eligible Seasons.

NUMBER OF ELIGIBLE SEASONS	PERCENTAGE OF REDUCTION
4.5	10%
4	20%
3.5	30%
3	40%
2.5	50%
2	60%
1.5	70%
1	80%
.5	90%
0	97.5%

19. How do prior strokes or traumatic brain injuries of a retired player affect his monetary award?

It depends. A retired player's monetary award (or his Representative Claimant monetary award) will be reduced by 75% if he experienced a medically diagnosed stroke that occurred:

- Before receiving a Qualifying Diagnosis, or
- A severe traumatic brain injury unrelated to NFL football that occurred during or after the time the retired player played NFL football but before he received a Qualifying Diagnosis.

The award will not be reduced if the retired player (or his Representative Claimant) can show by clear and convincing evidence that the stroke or traumatic brain injury is not related to the Qualifying Diagnosis.

20. How is a retired player's monetary award affected if he does not participate in the BAP program?

It depends on when the retired player receives his Qualifying Diagnosis and the nature of the diagnosis. There is a 10% reduction to the monetary award if the retired player does not participate in the BAP and:

- Did not receive a Qualifying Diagnosis prior to [Date of Preliminary Approval Order], and
- Receives a Qualifying Diagnosis (other than ALS) after his deadline to receive a BAP baseline assessment examination.

21. Can I receive a monetary award even though the retired player is dead?

Yes. Representative Claimants for deceased retired players with a Qualifying Diagnoses will be eligible to receive monetary awards. If the deceased retired player died before January 1, 2006, however, the Representative Claimant will only receive a monetary award if the Court determines that a wrongful death or survival claim is allowed under applicable state law.

Derivative Claimants also will be eligible for a total award of 1% of the monetary award that the Representative Claimant for the deceased retired player receives (see Question 16).

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[22. Will this Settlement affect my participation in NFL or NFLPA-related benefits programs?]

No. The Settlement benefits are completely independent of any benefits programs that have been created by or between the NFL and the NFL Players Association. This includes the 88 Plan (Article 58 of the 2011 Collective Bargaining Agreement) and the Neuro-Cognitive Disability Benefit (Article 65 of the 2011 Collective Bargaining Agreement).

Note: The Settlement ensures that a retired player who has signed, or will sign, a release as part of his Neuro-Cognitive Disability Benefit application, will not be denied Settlement benefits.

[23. Will this Settlement prevent me from bringing workers' compensation claims?]

Claims for workers' compensation will not be released by this Settlement.

EDUCATION FUND

[24. What type of education programs are supported by the Settlement?]

The Settlement will provide \$10 million in funding to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL's medical and disability programs and other educational programs and initiatives.

Retired players will be able to actively participate in such initiatives if they desire.

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT

[25. What am I giving up to stay in the Settlement Class?]

Unless you exclude yourself from the Settlement, you cannot sue the NFL Parties, the Member Clubs, or related individuals and entities, or be part of any other lawsuit against the NFL Parties about the issues in this case. This means you give up your right to continue to litigate any claims related to this Settlement, or file new claims, in any court or in any proceeding at any time. You also are promising not to sue the National Collegiate Athletic Association or other collegiate, amateur or youth football organizations and entities for your cognitive injuries if you receive a monetary award under this Settlement. **However, the Settlement does not release any claims for workers' compensation (see Question 23) or claims alleging entitlement to NFL medical and disability benefits available under the Collective Bargaining Agreement.**

Please note that certain Plaintiffs also sued the football helmet manufacturer Riddell and certain related entities (specifically, Riddell, Inc., Riddell Sports Group Inc., All American Sports Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG Holdings Corp.). **They are not parties to this Settlement and claims against them are not released by this Settlement.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Article XVIII of the Settlement Agreement contains the complete text and details of what Settlement Class Members give up unless they exclude themselves from the Settlement, so please read it carefully. The Settlement Agreement is available at www.NFLConcussionSettlement.com. If you have any questions you can talk to the law firms listed in Question 33 for free or you can talk to your own lawyer if you have questions about what this means.

How To GET BENEFITS

26. How do I get Settlement benefits?

To get benefits, you will need to register. Registration will not begin until after the Settlement is approved by the Court (*see* Question 37) and any appeals are fully resolved. Once that occurs, further notice will be provided about how to register for benefits. In the meantime, please go to www.NFLConcussionSettlement.com or call 1-800-000-0000 to sign-up for notice of registration. Registration must be completed in the time permitted (180 days from the time notice of registration is provided) if you wish to receive any of the benefits provided through this Settlement.

27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?

Yes. Retired NFL Football Players and Representative Claimants must submit claims for monetary awards within two years after the date of the diagnosis for which they claim a monetary award, or the date the Settlement is granted final approval and any appeals are fully resolved, whichever is later. This deadline may be extended to within four years of the Qualifying Diagnosis or the date the Settlement is granted final approval and any appeals are fully resolved if the Retired NFL Football Player or Representative Claimant can show substantial hardship beyond the Qualifying Diagnosis. Derivative Claimants must submit claims no later than 30 days after the Retired NFL Football Player through whom the close relationship is the basis for the claim (or the Representative Claimant of that retired player) receives a notice that he is entitled to a monetary award.

All claims must be submitted by the end of the 65-year term of the Monetary Award Fund.

28. Can I re-apply for compensation if my claim is denied?

Yes. A Settlement Class Member who submits a claim for a monetary award that is denied can re-apply in the future should the Retired NFL Football Player's medical condition change.

29. Can I appeal the determination of my monetary award claim?

Yes. The Settlement establishes a process for a Settlement Class Member to appeal the denial of a monetary award claim or the amount of the monetary award.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive benefits from this Settlement, and you want to retain the right to sue the NFL Parties about the legal issues in this case, then you must take steps to remove yourself from the Settlement. You can do this by asking to be excluded – sometimes referred to as “opting out” of – the Settlement Class.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

30. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail a letter or other written document to the Claims Administrator. Your request must include:

- Your name, address, telephone number, and date of birth;
- A copy of your driver's license or other government issued identification;
- A statement that "I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323" (or substantially similar clear and unambiguous language); and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

You must mail your exclusion request, postmarked no later than **Month 00, 0000** [Date ordered by the Court], to [INSERT INFORMATION], City, ST 00000.

31. If I do not exclude myself, can I sue the NFL Parties for the same thing later?

No. Unless you exclude yourself, you give up the right to sue the NFL Parties for all of the claims that this Settlement resolves. If you want to maintain your own lawsuit relating to the claims released by the Settlement, then you must exclude yourself by **Month 00, 0000**.

32. If I exclude myself, can I still get benefits from this Settlement?

No. **If you exclude yourself from the settlement you will not get any Settlement benefits.** You will not be eligible to receive a monetary award or participate in the Baseline Assessment Program.

THE LAWYERS REPRESENTING YOU**33. Do I have a lawyer in the case?**

The Court has appointed a number of lawyers to represent all Settlement Class Members as "Co-Lead Class Counsel," "Class Counsel" and "Subclass Counsel" (see Question 6). They are:

Christopher A. Seeger SEEGER WEISS LLP 77 Water Street New York, NY 10005	Sol Weiss ANAPOL SCHWARTZ 1710 Spruce Street Philadelphia, PA 19103
<i>Co-Lead Class Counsel</i>	<i>Co-Lead Class Counsel</i>
Steven C. Marks PODHURST ORSECK P.A. City National Bank Building 25 W. Flagler Street, Suite 800	Gene Locks LOCKS LAW FIRM The Curtis Center, Suite 720 East 601 Walnut Street

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Miami, FL 33130-1780	Philadelphia, PA 19106
<i>Class Counsel</i>	<i>Class Counsel</i>
Arnold Levin LEVIN FISHBEIN SEDRAN & BERMAN 510 Walnut Street, Suite 500 Philadelphia, PA 19106	Dianne M. Nast NAST LAW LLC 1101 Market Street, Suite 2801 Philadelphia, Pennsylvania 19107
<i>Counsel for Subclass 1</i>	<i>Counsel for Subclass 2</i>

You will not be charged for contacting these lawyers. If you are already represented by an attorney, you may contact your attorney to discuss the proposed settlement. If you are not already represented by an attorney, and you want to be represented by your own lawyer, you may hire one at your own expense.

34. How will the lawyers be paid?

At a later date to be determined by the Court, Co-Lead Class Counsel, Class Counsel and Subclass Counsel will ask the Court for an award of attorneys' fees and reasonable costs. The NFL Parties have agreed not to oppose or object to the request for attorneys' fees and reasonable incurred costs if the request does not exceed \$112.5 million. These fees and incurred costs will be paid separately by the NFL Parties and not from the \$760 million settlement funds. Settlement Class Members will have an opportunity to comment on and/or object to this request at an appropriate time. Ultimately, the award of attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

35. How do I tell the Court if I do not like the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you or your attorney must submit your written objection to the Court. The objection must include the following:

- The name of the case and multi-district litigation, *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323;
- Your name, address, telephone number, and date of birth;
- The name of the Retired NFL Football Player through which you are a Representative Claimant or Derivative Claimant (if you are not a retired player);
- Written evidence establishing that you are a Settlement Class Member;
- A detailed statement of your objections, and the specific reasons for each such objection, including any facts or law you wish to bring to the Court's attention;

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- Any other supporting papers, materials or briefs that you want the Court to consider in support of your objection; and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

In addition, if you intend to appear at the final approval hearing (the “Fairness Hearing”), you must submit a written notice of your intent [INSERT REQUIREMENTS FROM PRELIMINARY APPROVAL ORDER] by [INSERT DATE.]

The requirements to object to the Settlement are described in detail in the Settlement Agreement in section 14.3.

You must file your objection with the Court no later than **Month 00, 0000 [date ordered by the Court]**:

COURT
Clerk of the Court/Judge Anita B. Brody United States District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797

36. What is the difference between objecting to the Settlement and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement or want it to say something different. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and you do not want to receive any Settlement benefits. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. The Court will determine if you are allowed to speak if you request to do so (*see* Question 39).

37. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing at XX:00 x.m. on **Month 00, 0000**, at the United States District Court for the Eastern District of Pennsylvania, located at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.NFLConcussionSettlement.com or call 1-800-000-0000. At this hearing, the Court will hear evidence about whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and may elect to listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

The Court will consider the request for attorneys' fees and reasonable costs by Co-Lead Class Counsel, Class Counsel and Subclass Counsel (*see* Question 34) after the Fairness Hearing, which will be set at a later date by the Court.

38. Do I have to attend the hearing?

No. Co-Lead Class Counsel, Class Counsel and Subclass Counsel will answer questions the Court may have. But you are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not necessary.

39. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. The Court will determine whether to grant you permission to speak. To make such a request, you must file a written notice stating that it is your intent to appear at the *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323 Fairness Hearing ("Notice of Intention to Appear"). Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Court no later than Month 00, 0000.

GETTING MORE INFORMATION

40. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.NFLConcussionSettlement.com. You also may write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000 or call 1-800-000-0000.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE NFL PARTIES FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

EXHIBIT 4

NFL Concussion Claims Administrator
PO BOX 0000
City, State 00000-0000

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID

NFL Concussion Settlement

Important Information Inside

NAME
ADDRESS
CITY STATE ZIP CODE

\$760 Million NFL Concussion Settlement
Retired NFL Players and Their Families Could Get Money and Benefits

EXHIBIT 5

\$760 MILLION NFL CONCUSSION SETTLEMENT

The NFL and NFL Properties have agreed to a Settlement that will provide \$760 million in benefits to retired players and their families.

Who is included in the Settlement?

The Settlement generally includes all retired players of the NFL, AFL, World League of American Football, NFL Europe League and NFL Europa League. The Settlement includes immediate family members of retired players, and incompetent or deceased players. The NFL and NFL Properties deny that they did anything wrong.

What does the Settlement provide?

The Settlement provides \$760 million in funds for three benefits:

- Baseline medical exams to determine if retired players suffer from neurocognitive impairment and are entitled to additional testing and/or treatment (\$75 million),
- Monetary awards for diagnoses of ALS (Lou Gehrig's disease), Alzheimer's Disease, Parkinson's Disease, Dementia and certain cases of chronic traumatic encephalopathy or CTE (a neuropathological finding) diagnosed after death (\$675 million), and
- Education programs and initiatives related to football safety (\$10 million).

Retired players do not have to prove that their injuries were caused by playing NFL football to get money from the Settlement.

How can I get benefits?

You will need to register for benefits. Please go to the website or call 1-800-000-0000 to learn more.

What are my rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the NFL yourself, you must exclude yourself from the Class by **Month 00, 2014**. If you stay in the Class, you may object to the Settlement by **Month 00, 2014**.

The Court will hold a hearing on **Month 00, 2014** to consider whether to approve the Settlement. You or your own lawyer may appear and request to speak at the hearing at your own expense. At a later date to be determined by the Court, the attorneys will ask the Court for approval of an award of attorneys' fees and reasonable costs. The NFL and NFL Properties have agreed not to oppose or object to the request for attorneys' fees and reasonable costs, if the request does not exceed \$112.5 million. This money would be paid by the NFL and NFL Properties and would be in addition to the \$760 million Settlement.

Please Share this Notice with Other Retired Players and Their Families

Exhibit D

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS'
CONCUSSION INJURY LITIGATION

Kevin Turner and Shawn Wooden, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties LLC,
successor-in-interest to NFL Properties, Inc.,

Defendants.

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

CIVIL ACTION NO: 14-29

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**DECLARATION OF MEDIATOR AND FORMER
UNITED STATES DISTRICT COURT JUDGE LAYN R. PHILLIPS
IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLEMENT**

Layn R. Phillips declares as follows:

1. I am the Court-appointed mediator in this action and a former United States District Court Judge. I submit this declaration in support of preliminary approval of the proposed class action settlement between the proposed Plaintiff Class and defendants NFL and NFL Properties LLC (collectively, the "NFL Parties").

2. At the request of the Court, I conducted an extensive mediation over the course of the last five months that produced the proposed settlement now before the Court for preliminary approval. The parties negotiated this settlement under my supervision. The talks were vigorous,

at arm's length, and in good faith. Based on my extensive experience as a mediator and former judge, my frequent and detailed discussions with the parties, and the information made available to me during the mediation, I believe that the \$760 million proposed settlement (plus attorneys' fees and reasonable costs) represents a fair and reasonable settlement given the substantial risks involved for both sides. Without waiver of the mediation privilege, I describe below the reasons for my view.

Qualifications and Experience

3. I am a partner at Irell & Manella LLP. I am a member of the bars of Oklahoma, Texas, California and the District of Columbia, as well as the United States Courts of Appeals for the Ninth and Tenth Circuits. I am the former United States Attorney for the Northern District of Oklahoma and a former United States District Court Judge for the Western District of Oklahoma. I founded the Irell & Manella Alternative Dispute Resolution Center, where I have headed the firm's ADR practice since 1991.

4. I have successfully mediated complex commercial cases, including hundreds of class actions, for over twenty years. Before that, as a federal judge, I presided over hundreds of settlement conferences in complex business disputes and class actions. I have been appointed Special Master by numerous federal courts in complex civil proceedings. It is not uncommon for me to settle billions of dollars of disputes on an annual basis. It is my understanding that I was nominated by the parties and appointed by the Court to mediate this important matter in part because of my extensive experience resolving complex, high-visibility disputes of this kind.

The Mediation Process

5. Under my supervision, beginning immediately upon my appointment by the Court in July of this year, the parties engaged in arm's-length, hard-fought negotiations. As is my

practice, I conducted multiple face-to-face mediation sessions with both sides present, as well as many separate caucus sessions where I met only with one side or the other. All of these in-person mediation sessions were conducted in New York City. However, I also engaged in considerable telephonic follow-up work with all of the parties involved. In addition, counsel for the parties conducted extensive negotiations outside my presence pursuant to requests and directions that I gave to them. I dedicated more than twelve full days to mediate this matter in addition to the considerable hours I invested in discussions with the parties outside these formal sessions.

6. At all times, the parties aggressively asserted their respective positions on a host of issues. On occasion, the negotiations were contentious (although both sides were always professional). Because of the schedule that the Court imposed and the number and complexity of issues to be resolved, members of my mediation team and I sometimes multi-tracked mediation efforts by separately addressing different sets of issues with various counsel and the parties' experts during in-person mediation sessions in New York City, as well as during the telephonic follow-up process. On almost every day between my appointment as mediator and the announcement of the settlement on August 29, the parties and I discussed issues relating to possible settlement.

7. Plaintiffs and the NFL Parties each were represented by highly experienced, effective and aggressive counsel. I was satisfied throughout the negotiations that the parties' positions were thoroughly explored and advanced. Multiple law firms and individual counsel were involved on behalf of both sides. These counsel presented an impressive array of legal experience, talent, and expertise. Moreover, in order to ensure the adequate and unconflicted representation of all of the proposed class members, Plaintiffs agreed during the negotiations to

create two proposed separate subclasses, each represented by separate counsel. Generally speaking, one subclass is composed of retired NFL players who have diagnosed cognitive impairments; the other subclass is composed of retired players without a diagnosis of cognitive impairment. Plaintiffs believed—and I agreed—that having these two separate subclasses would ensure that any final resolution did not favor retired players who are currently suffering from compensable injuries from those who have not been diagnosed and who may not develop compensable injuries for years to come, if ever.

8. In addition to highly experienced counsel, both Plaintiffs and the NFL Parties retained various medical and actuarial/economics experts to assist them in the settlement negotiations. The medical experts advised the parties on the multiplicity of medical definition issues and other medical aspects of the settlement. The parties' economists and actuaries assisted in modeling the likely disease incidence and adequacy of the funding provisions and benefit levels contained in the proposed settlement. I met personally with certain of the parties' experts during the mediation to satisfy myself that the parties were being expertly advised and were considering the relevant issues. The parties' experts also answered many of the questions I had about how the proposed settlement would operate, as well as any underlying considerations they had made and their analysis and conclusions. It was clear to me that both sides had experts that were extremely well-versed in the medical literature and issues relevant to arriving at a fair settlement that would function efficiently over the course of the settlement period.

9. During the course of the mediation and at my request, the parties submitted various mediation materials to me and made multiple presentations regarding their positions on various factual and legal issues. I was assisted in my work and analysis by colleagues at my law firm, who independently reviewed the materials and the relevant law. During the mediation

sessions, there were extensive discussions of the strengths and weaknesses of the parties' various positions and of possible settlement structures.

10. As would be expected, the proposed terms of the settlement changed substantially over the course of time. On numerous occasions, although the parties shared a common goal, they proposed very different visions of how to achieve that goal. I worked constructively with counsel to offer possible compromises and solutions.

11. At all times, Plaintiffs' counsel zealously represented the proposed class and subclasses. They regularly and passionately expressed the need to protect the interests of the retirees and their families and fought hard for the greatest possible benefits in the context of a settlement that the NFL Parties could accept. It was evident throughout the mediation process that Plaintiffs' counsel were prepared to litigate and try these cases, and face the risk of losing with no chance to recover for their labor or their expenses, if they were not able to achieve a fair and reasonable settlement result for the proposed class.

12. At the same time, Plaintiffs' counsel recognized—correctly in my judgment—the significant legal and factual hurdles Plaintiffs faced if they proceeded with the litigation. First and foremost, a litigation of this size and complexity can take many years to litigate. By resolving the litigation at this time, Plaintiffs' counsel, in part, sought to compensate impaired retired NFL players who need money now in order to address their medical conditions. They also ensured that compensation and medical testing will be available for retired NFL players who are not impaired at present, but may become so in the future.

13. Second, Plaintiffs faced the serious risk that the Court would find that their claims were preempted, in whole or in part, by federal labor law and under the various Collective Bargaining Agreements. I reviewed the parties' briefs on the NFL Parties' motions to dismiss

and the transcript of the oral argument before this Court. Both sides made compelling arguments for their clients. Plaintiffs' counsel recognized that the claims of many members of the class may have been dismissed outright if the NFL Parties prevailed on the motions to dismiss, thereby impairing the ability of many Plaintiffs to proceed in the litigation. Plaintiffs' counsel provided a strong response to the NFL Parties' motion, relying heavily on *Kline v. Security Guards, Inc.*, 386 F.3d 246 (3d Cir. 2004), a Third Circuit case that was discussed extensively at the hearing before this Court. Thus, the NFL Parties also faced risk that their motions would be denied, in whole or in part, and that the claims of many players would proceed through litigation. Although the parties did not know (and still do not know) the outcome of the motions to dismiss, the significant risks for both sides squarely presented before the Court in the motion papers hastened the parties' settlement efforts.

14. Third, Plaintiffs also faced significant hurdles in proving causation, *i.e.*, that the players suffered cognizable injuries *as a result of* concussions and sub-concussive hits they experienced while playing in the NFL. There is little doubt that both general and case-specific causation would be hotly contested if these matters were litigated, and Plaintiffs faced a significant risk that they would not be able to prevail in the end. In particular, Plaintiffs would likely be faced with having to prove that their alleged injuries were caused by their NFL careers rather than by some cause unrelated to football or by prior football experience in middle school, high school and college. Many members of the proposed class had short NFL careers and played substantially more football before joining the NFL, which made this burden all the more challenging. There are also many members of the proposed class who developed their symptoms later in life and may therefore have had difficulty proving that their alleged injuries are not a result of the normal aging process. More broadly, the science regarding concussions and sub-

concussive hits and cognitive impairment is still evolving, which makes it more difficult to prove negligence or fraud the earlier a player played. The research is often contradictory, thereby creating additional hurdles for a successful prosecution of Plaintiffs' claims.

15. Plaintiffs faced other legal hurdles as well, including, but not limited to, various statute of limitations arguments and the assertion of the "assumption of risk" defense based on the argument that the retired NFL players knew at the time they played that football could be a dangerous activity and that the players assumed that risk when they chose to play.

16. Like Plaintiffs, the NFL Parties also faced great risks if they chose to litigate these cases. There was a significant risk that the Court would not accept, in whole or in part, the NFL Parties' preemption defense, which in turn would leave much of the case intact. The same was true of the NFL Parties' other legal defenses of statute of limitations and assumption of risk. If the NFL Parties did not succeed on dismissing all of these cases as a matter of law, they faced years of very expensive discovery and potentially hundreds of trials in state and federal courts around the country. Among Plaintiffs' many claims and allegations, the NFL Parties faced the risks of litigating issues relating to helmet safety standards and rules of football play. Each potential lawsuit carried with it the risk of a significant damage verdict and a negative precedent that could affect all cases that followed.

17. In short, both sides faced substantial risks if they chose to litigate these matters and tremendous benefits if they could fairly resolve their differences.

The Fairness and Adequacy of the Proposed Settlement

18. The negotiated settlement produced by the mediation process, as reflected in the parties' proposed settlement agreement, represents a thoughtful, deliberative, extraordinary and comprehensive settlement that will benefit thousands of NFL retirees and their families. If the

settlement is approved, NFL retirees immediately will be entitled to an innovative baseline testing program and, depending on their diagnosis, certain supplemental medical benefits. In addition, players that are diagnosed with serious forms of dementia, ALS, Alzheimer's Disease, Parkinson's Disease, and certain instances of CTE will be eligible to receive cash awards of up to \$5 million, depending on the disease, the age of the player at diagnosis, the length of the player's career playing in the NFL and certain associated leagues and certain other relevant factors. The benefits will be made available promptly after the Effective Date of the settlement and will remain available for sixty-five years, ensuring that players who appear healthy today but develop these kinds of medical issues in the future will have the comfort of knowing that compensation is available through the settlement fund. The settlement also allocates substantial funding for education to advance the safety of the sport, including in youth football. At the same time, the settlement protects the rights of retired NFL players to continue to benefit from benefits that have been collectively bargained for between the NFL and the NFL Players Association, including pension benefits, and medical and disability benefits such as the 88 Plan and the Neuro-Cognitive Disability Benefit that was introduced in the 2011 Collective Bargaining Agreement. Plaintiffs' counsel fought hard to ensure that the retired NFL players could continue to apply for these extensive benefits, and the NFL Parties agreed that they would not enforce any release that had been signed by a class member in connection with applying for the Neuro-Cognitive Disability Benefit when he seeks to take part in the settlement benefits.

19. Based upon my extensive experience in this case and other complex actions, I believe that the settlement benefits provided to the class members as described above are fair and reasonable in light of the parties' claims and defenses, and the expense, uncertainty and time inherent in litigating the retired players' claims to judgment. In particular, it is my considered

judgment that Plaintiffs would be unlikely to have obtained more money and benefits without going through years of discovery and trial, where they would face substantial risks of loss due to their inability to prove negligence or fraud on the part of the NFL Parties or judgments below what they will receive in this proposed settlement. In addition, even after judgment, the parties likely would have been engaged in years of appellate proceedings before any judgment would be finalized.

20. Equally important, based on my review of the analyses conducted by the independent economists or actuaries retained by the parties, I believe that the \$760 million paid by the NFL Parties for the settlement is fair and reasonable and will be sufficient to fund the benefits to which the parties have agreed. It is my understanding that Plaintiffs plan on presenting a summary of their experts' work in this area at the final settlement hearing.

21. Finally, I should note that the NFL Parties also have agreed not to object to an award of attorneys' fees and reasonable costs of up to \$112.5 million *in addition to* the \$760 million settlement. This is another significant benefit that Plaintiffs' counsel obtained for the proposed class, as compared to the vast majority of other class settlements where the attorneys' fee and reasonable cost component is deducted from the common fund. Ultimately, the total settlement, with attorneys' fees and reasonable costs, will approach \$900 million. This, in my judgment, is an outstanding result for the class members.

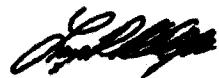
Conclusion

For all the reasons set forth above, the proposed settlement of these actions was the result of a fair, vigorous, and arm's-length mediated negotiation process. The settlement itself is, in my judgment, fair and reasonable to the proposed class members, given the risks of these

litigations and the cost and complexity of trying them to judgment. I therefore enthusiastically support Plaintiffs' motion for preliminary approval of the proposed settlement.

I declare that the foregoing is true and correct.

Executed this 3rd day of January 2014.



LAYN R. PHILLIPS
Former United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

CIVIL ACTION NO: 14-29

MEMORANDUM OF LAW IN SUPPORT OF
MOTION OF PROPOSED CO-LEAD CLASS COUNSEL, CLASS COUNSEL AND
SUBCLASS COUNSEL FOR AN ORDER: (1) GRANTING PRELIMINARY
APPROVAL OF THE CLASS ACTION SETTLEMENT AGREEMENT;
(2) CONDITIONALLY CERTIFYING A SETTLEMENT CLASS AND SUBCLASSES;
(3) APPOINTING CO-LEAD CLASS COUNSEL, CLASS COUNSEL, AND SUBCLASS
COUNSEL; (4) APPROVING THE DISSEMINATION OF CLASS NOTICE;
(5) SCHEDULING A FAIRNESS HEARING; AND
(6) STAYING CLAIMS AS TO THE NFL PARTIES AND ENJOINING PROPOSED
SETTLEMENT CLASS MEMBERS FROM PURSUING
RELATED LAWSUITS

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	3
II. FACTUAL BACKGROUND.....	5
A. Plaintiffs' Claims	5
B. Formation of the NFL Players' Concussion Injury Multidistrict Litigation.....	6
C. Proceedings in this Court.....	7
D. Mediation	8
E. Public Announcement of the Proposed Settlement.....	9
F. Court Appointment of a Special Master	9
III. MATERIAL TERMS OF THE SETTLEMENT	10
A. Settlement Class and Subclasses.....	10
B. Settlement Benefits	12
1. Baseline Assessment Program	15
2. Monetary Awards and Derivative Claimant Awards.....	17
a) Maximum Awards	17
b) Supplemental Awards	19
c) Credited Eligible Seasons	19
d) Offsets	20
e) Lien Resolution.....	21
f) Derivative Claimant Awards.....	21
g) Appeals	21
h) Funding and Additional Contingent Contribution	22
3. Education Fund	23

4.	Preservation of Collective Bargaining Benefits and Claims for Workers' Compensation	24
5.	Waiver of Causation, Statutes of Limitations, and Other Defenses	25
6.	Attorneys' Fees	26
C.	Releases, Covenant Not To Sue And Bar Order.....	26
D.	Class Notice	27
IV.	ARGUMENT	29
A.	Preliminary Approval of the Settlement Is Appropriate	29
1.	The Proposed Settlement Is the Product of Good Faith, Extensive Arm's Length Negotiations.....	35
2.	The Class Counsel's Investigation of Both Plaintiffs' Claims and the NFL Parties' Defenses Supports Preliminary Approval	36
3.	There Is No Preferential Treatment of Certain Class Members and Class Representatives Support the Settlement.....	38
4.	There Are No Other "Obvious Deficiencies" To Doubt the Proposed Settlement's Fairness	39
B.	The Settlement Class And Subclasses Should Be Certified For Settlement Purposes	40
1.	The Settlement Class and Subclasses Meet the Requirements Under Rule 23(a).....	41
a)	Numerosity.....	41
b)	Commonality.....	41
c)	Typicality	42
d)	Adequacy of Representation	43
2.	Common Questions of Law and Fact Predominate and the Superiority Requirement Is Met.....	48
C.	Plaintiffs Faced Significant Challenges and Obstacles in the Litigation	50
1.	Preemption	51

2.	Causation.....	53
3.	Statutes of Limitation.....	54
4.	Assumption of Risk.....	57
5.	Other Defenses.....	59
D.	The Proposed Form and Method of Class Notice Satisfy Due Process.....	61
E.	The Court Should Enjoin Related Litigation By Settlement Class Members.....	64
V.	CONCLUSION.....	67

TABLE OF AUTHORITIES

Federal Cases

<i>Al-Ameen v. Atlantic Roofing Corp.</i> , 151 F. Supp. 2d 604 (E.D. Pa. 2001).....	60
<i>Alberton v. Commonwealth Land Title Ins. Co.</i> , No. 06-3755, 2008 WL 1849774 (E.D. Pa. Apr. 25, 2008)	64
<i>Allis-Chalmers Corp. v. Lueck</i> , 471 U.S. 202 (1985).....	51
<i>Amalgamated Workers Union of Virgin Islands v. Hess Oil Virgin Islands Corp.</i> , 478 F.2d 540 (3d Cir. 1973).....	49
<i>Amchem Prods. v. Windsor</i> , 521 U.S. 591 (1997).....	passim
<i>Baby Neal v. Casey</i> , 43 F.3d 48 (3d Cir. 1994)	42
<i>Battle v. Liberty Nat'l Life Ins. Co.</i> , 877 F.2d 877 (11th Cir.1989).....	66
<i>Brittenriker v. Mock</i> , No. 3:08 CV 1890, 2009 WL 2392917 (N.D. Ohio July 31, 2009)	59
<i>Brown v. National Football League</i> , 219 F. Supp. 2d 372 (S.D.N.Y. 2002).....	58, 59
<i>Carlough v. Amchem Prods., Inc.</i> , 10 F.3d 189 (3d Cir. 1993).....	66
<i>Carrera v. Bayer Corp.</i> , 727 F.3d 300 (3d Cir. 2013).....	38
<i>DeJulius v. New England Health Care Emps. Pension Fund</i> , 429 F.3d 935 (10th Cir. 2005)....	61
<i>Denney v. Deutsche Bank AG</i> , 443 F.3d 253 (2d Cir. 2006)	46
<i>Dewey v. Volkswagen Aktiengesellschaft</i> , 681 F.3d 170 (3d Cir. 2012)	45
<i>Dryer v. National Football League</i> , Civ No.09-2182- PAM-AJB, 2013 WL 5888231 (D. Minn. Nov. 1, 2013)	27, 28, 63
<i>Duerson v. National Football League</i> , No. 12-C-2513, 2012 WL 1658353 (N.D. Ill. May 11, 2012)	51
<i>Ehrheart v. Verizon Wireless</i> , 609 F.3d 590 (3d Cir. 2010)	29, 30
<i>Eisen v. Carlisle & Jacqueline</i> , 417 U.S. 156 (1974).....	61
<i>Evans v. Jeff D.</i> , 475 U.S. 717 (1986).....	32
<i>Fulgham v. Daniels J. Keating Co.</i> , 285 F. Supp. 2d 525 (D.N.J. 2003)	59
<i>Gates v. Rohm & Haas Co.</i> , 248 F.R.D. 434 (E.D. Pa. 2008)	35, 36
<i>Grunewald v. Kasperbauer</i> , 235 F.R.D. 599 (E.D. Pa. 2006)	63
<i>Hackbart v. Cincinnati Bengals, Inc.</i> , 601 F.2d 516 (10th Cir. 1979).....	58
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1997)	65

<i>In re Automotive Refinishing Paint Antitrust Litig.</i> , MDL No. 1426,	
2004 WL 1068807 (E.D. Pa. May 11, 2004)	33, 35
<i>In re Baldwin-United Corp.</i> , 770 F.2d 328 (2d Cir. 1985)	66
<i>In re Blood Reagents Antitrust Litig.</i> , 283 F.R.D. 222 (E.D. Pa. 2012)	41, 42
<i>In re Certainteed Corp. Roofing Shingle Prods. Liab. Litig.</i> ,	
269 F.R.D. 468 (E.D. Pa. 2010).....	62, 63
<i>In re Chinese-Manufactured Drywall Prods. Liab. Litig.</i> , MDL No. 2047,	
2013 WL 499474 (E.D. La. Feb. 7, 2013)	31
<i>In re CIGNA Corp. Sec. Litig.</i> , No. 02-8088, 2007 WL 2071898 (E.D. Pa. July 13, 2007)	35
<i>In re Corrugated Container Antitrust Litig.</i> , 659 F.2d 1332 (5th Cir. 1981)	66
<i>In re Countrywide Financial Corp. Customer Data Sec. Breach Litig.</i> ,	
No. 3:08-MD-01998, 2009 WL 5184352 (W.D. Ky. Dec. 22, 2009).....	47
<i>In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.</i> ,	
No. 1203, 99-20593 2000 WL 1222042 (E.D. Pa. Aug. 28, 2000)	31, 46, 47
<i>In re Diet Drugs Prods. Liab. Litig.</i> , 582 F.3d 524 (3d Cir. 2009).....	31
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<i>In re Diet Drugs Prods. Liab. Litig.</i> , 431 F.3d 141 (3d Cir. 2005).....	46
<i>In re Diet Drugs Prods. Liab. Litig.</i> , 282 F.3d 220 (3d Cir. 2002).....	65, 66
<i>In re General Motors Corp. Pick-up Truck Fuel Tank Prod. Liab. Litig.</i> ,	
55 F.3d 768 (3d Cir. 1995).....	33, 34
<i>In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litig.</i> ,	
851 F. Supp. 2d 1040 (S.D. Tex. 2012)	64
<i>In re Ikon Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	62
<i>In re Insurance Brokerage Antitrust Litig.</i> , 579 F.3d 241 (3d Cir. 2009)	44
<i>In re Inter-Op Hip Prosthesis Liab. Litig.</i> , 204 F.R.D. 330 (N.D. Ohio 2001)	45
<i>In re Linerboard Antitrust Litig.</i> , 292 F. Supp. 2d 631 (E.D. Pa. 2003).....	34, 54
<i>In re Lupron Marketing and Sales Practices Litig.</i> , 228 F.R.D. 75 (D. Mass. 2005).....	64
<i>In re Mid-Atlantic Toyota Antitrust Litig.</i> , 564 F. Supp. 1379 (D. Md. 1983)	33
<i>In re National Football League Players' Concussion Injury Litig.</i> , MDL 2323,	
842 F. Supp.2d 1378 (J.P.M.L. 2012).....	6, 7

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<i>In re Prudential Sec. Inc. Ltd. P'ships Litig.</i> , 163 F.R.D. 200 (S.D.N.Y. 1995)	63
<i>In re School Asbestos Litig.</i> , 789 F.2d 996 (3d Cir.), <i>cert. denied</i> , 479 U.S. 852 (1986)	42
<i>In re Serzone Prods. Liab. Litig.</i> , 231 F.R.D. 221 (S.D. W.Va. 2005)	45
<i>In re Smithkline Beckman Corp. Sec. Litig.</i> , 751 F. Supp. 525 (E.D. Pa. 1990)	39
<i>In re Uponor, Inc.</i> , No. 11-MD-2247,	
2012 U.S. Dist. LEXIS 5339 (D. Minn. Jan. 18, 2012)	65
<i>In re Vioxx Prods. Liab. Litig.</i> , 650 F.Supp.2d 549 (E.D. La. 2009)	30
<i>In re Warfarin Sodium Antitrust Litig.</i> , 391 F.3d 516 (3d Cir. 2004)	passim
<i>Kline v. Security Guards, Inc.</i> , 386 F.3d 246 (3d Cir. 2004)	52
<i>Mack Trucks, Inc. v. Int'l Union, UAW</i> , No. 07-3737,	
2011 WL 1833108 (E.D. Pa. May 12, 2011)	34
<i>Marcus v. BMW of North America, LLC</i> , 687 F.3d 583 (3d Cir. 2012)	38
<i>Mehling v. New York Life Ins. Co.</i> , 246 F.R.D. 467 (E.D. Pa. 2007)	33, 34
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)	61
<i>Ortiz v. Fibreboard Corp.</i> , 52 U.S. 815 (1999)	30, 45, 46
<i>Petrovic v. Amoco Oil Co.</i> , 200 F.3d 1140 (8th Cir. 1999)	44
<i>Prandini v. National Tea Co.</i> , 585 F.2d 47 (3d Cir. 1978)	26
<i>Rodriguez v. National City Bank</i> , 726 F.3d 372 (3d Cir. 2013)	32, 40, 42
<i>Rolick v. Collins Pine Co.</i> , 925 F.2d 661 (3d Cir. 1991)	60
<i>Saltzman v. Pella Corp.</i> , 257 F.R.D. 471 (N.D. Ill. 2009)	45
<i>Stringer v. National Football League</i> , 474 F. Supp.2d 894 (S.D. Ohio 2007)	51
<i>Stewart v. Abraham</i> , 275 F.3d 220 (3d Cir. 2001)	41
<i>Sullivan v. DB Investors, Inc.</i> , 667 F.3d 273 (3d Cir. 2010)	passim
<i>Tenuto v. Transworld Sys.</i> , No. 99-4228, 2001 WL 1347235 (E.D. Pa. Oct. 31, 2001)	34, 39
<i>Trans Penn Wax Corp. v. McCandless</i> , 50 F.3d 217 (3d Cir. 1995)	53
<i>Trist v. First Federal Savings & Loan Assoc. of Chester</i> , 89 F.R.D. 1 (E.D. Pa. 1980)	64
<i>Turner v. Murphy Oil USA, Inc.</i> , 234 F.R.D. 597 (E.D. La. 2006)	31
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 131 S.Ct. 2541 (U.S. 2011)	32, 42, 48

Winkler v. Eli Lilly & Co., 101 F.3d 1196 (7th Cir. 1996) 66

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State Cases

<i>Allen v. Kamp's Beauty Salon, Inc.</i> , 177 So. 2d 678 (Fla. Dist. Ct. App. 1965)	59
<i>Alqurashi v. Party of Four, Inc.</i> , 89 A.D.3d 1047 (N.Y. App. Div. 2d Dept. 2011).....	57
<i>Anson v. Am. Motors Corp.</i> , 747 P.2d 581 (Ariz. Ct. App. 1987).....	55
<i>Benitez v. New York City Bd. of Educ.</i> , 73 N.Y.2d 650 (1989)	58
<i>Bowen v. Eli Lilly & Co., Inc.</i> , 557 N.E.2d 739 (Mass. 1990).....	55
<i>Carr v. Anding</i> , 793 S.W.2d 148 (Mo. Ct. App. 1990).....	55
<i>Chalmers v. Toyota Motor Sales</i> , 935 S.W.2d 258 (Ark. 1996).....	55
<i>Collins v. Nat'l R.R. Passenger Corp.</i> , 9 A.3d 56 (Md. 2010).....	59
<i>Coomer v. Kansas City Royals Baseball Corp.</i> , Nos. WD 73984, WD 74040, 2013 WL 150838 (Mo. Ct. App. Jan. 15, 2013)	57
<i>Dreyer-Lefevre v. Morissette</i> , No. 56653, 2011 WL 2623955 (Nev. July 1, 2011).....	55
<i>Entergy Gulf States, Inc. v. Summers</i> , 282 S.W.3d 433 (Tex. 2009).....	60
<i>Finlay v. Storage Tech. Corp.</i> , 764 P.2d 62 (Colo. 1988)	60
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<i>Fox v. Ethicon Endo-Surgery, Inc.</i> , 110 P.3d 914 (Cal. 2005)	55
<i>Funston v. Sch. Town of Munster</i> , 849 N.E.2d 595 (Ind. 2006)	59
<i>Garrett v. NationsBank, N.A. (S.)</i> , 491 S.E.2d 158 (Ga. App. 1997)	59
<i>Glazier v. Keuka Coll.</i> , 275 A.D.2d 1039 (N.Y. App. Div. 4 th Dept. 2000).....	58
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<i>Hunt v. Skaneateles Cent. Sch. Dist.</i> , 227 A.D.2d 939 (N.Y. App. Div. 4 th Dept. 1996).....	58
<i>Johnston v. Dow & Coulombe, Inc.</i> , 686 A.2d 1064 (Me. 1996)	55
<i>Koenig v. Lambert</i> , 527 N.W.2d 903 (S.D. 1995)	56
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<i>McIntyre v. Valentine</i> , 833 S.W.2d 52 (Tenn. 1992).....	59
<i>Pedersen v. Zielski</i> , 822 P.2d 903 (Alaska 1991)	55

<i>Roberts v. City of Alexandria</i> , 246 Va. 17 (1993)	60
<i>Savino v. Robertson</i> , 652 N.E.2d 1240 (Ill. App. 1995)	57
<i>Smith v. McGittigan</i> , 376 So. 2d 598 (La. Ct. App. 1979)	59
<i>Stallings v. Food Lion, Inc.</i> , 539 S.E.2d 331 (N.C. App. 2000)	59
<i>Utilities Bd. of Opp. v. Shuler Bros., Inc.</i> , No. 1111558, 2013 WL 3154011 (Ala. June 21, 2013).....	55
<i>Valley Elec., Inc. v. Doughty</i> , 528 P.2d 927 (Colo. Ct. App. 1974)	59
<i>Washington Indep. Tel. Ass'n v. Washington Utilities & Transp. Comm'n</i> , 64 P.3d 606 (Wash. 2003).....	60
<i>Young v. Env'tl. Air Products, Inc.</i> , 665 P.2d 40 (Ariz. 1983)	60
<i>Zamudio v. City & Cnty. of San Francisco</i> , 82 Cal. Rptr. 2d 664 (Cal. App. 1999)	60
<u>Federal Statutes</u>	
15 U.S.C. §1691.....	32
28 U.S.C. §1407.....	6, 7, 49
28 U.S.C. §1651(a)	65
28 U.S.C. §2283.....	65
29 U.S.C. §185(a)	51
42 U.S.C. § 3605.....	32
<u>State Statutes</u>	
42 PA. CONS. STAT. ANN. § 7102.....	59
77 PA. CONS. STAT. ANN § 52	60
ARIZ. REV. STAT. ANN. § 12-2505	59
CONN. GEN. STAT. § 52-584.....	55
IDAHO CODE ANN. § 5-219(4).....	55
MASS. GEN. LAWS ANN. ch. 231, § 85	59
MICH. COMP. LAWS ANN. § 600.2959.....	59
MINN. STAT. ANN. § 604.01	59
N.Y.C.P.L.R. § 2-14	56
OHIO REV. CODE § 2315.19(B)(4)	59
TEX. CIV. PRAC. & REM. CODE ANN. § 33.001	59

VA. CODE ANN. § 8.01-230.....	56
WASH. REV. CODE ANN. § 4.22.005	59
<u>Rules</u>	
FED. R. CIV. P. 23	passim

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MEMORANDUM OF LAW

Plaintiffs, through their proposed Co-Lead Class Counsel, Class Counsel and Subclass Counsel, and Defendants National Football League and NFL Properties LLC (collectively, “the NFL Parties” and, together with Plaintiffs, the “Settling Parties”), have negotiated and agreed to a Class Action Settlement (or “Settlement”) that will resolve all claims against the NFL Parties in the *In re: National Football League Players’ Concussion Injury Litigation*, MDL 2323, and Related Lawsuits.¹ In addition to the NFL Parties, Plaintiffs have sued Riddell, Inc., Riddell Sports Group Inc., All American Sports Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG Holdings Corp. (collectively, the “Riddell Defendants”). The Riddell Defendants are not a party to the proposed Settlement.

This Memorandum of Law is submitted in support of the Motion of Proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel, for an Order: (1) granting Preliminary Approval of the Class Action Settlement Agreement; (2) conditionally certifying a Settlement Class and Subclasses; (3) appointing Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Of Counsel; (4) approving dissemination of Class Notice; (5) scheduling a Fairness Hearing; and (6) staying claims as to the NFL Parties and enjoining proposed Settlement Class Members from pursuing Related Lawsuits (“Motion for Preliminary Approval and Class Certification” or “Motion”), brought pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3) and 23(e). This Motion is unopposed by the NFL Parties.² For the reasons set forth below,

¹ Except where otherwise noted, the capitalized terms in this Memorandum of Law are taken from, and have the same meaning as those in, the Settlement Agreement, submitted herewith as Exhibit B to the Motion which this Memorandum of Law supports.

² The parties reserve all of their rights, including the right to propose or oppose class certification of a litigation class or class certification of a settlement class in the future, and the right to raise any argument not raised herein concerning any current or future litigated issue, should the Settlement Agreement be terminated or not consummated

Plaintiffs respectfully submit that this Class Action Settlement is within the “range of possible approval” under FED. R. CIV. P. 23(e) and request that the Court enter the proposed Preliminary Approval and Class Certification Order finding that: preliminarily, the Settlement is fair, reasonable, and adequate; the requirements for conditionally certifying the Settlement Class and Subclasses, for settlement purposes only, under Rules 23(a)(1)-(4) and 23(b)(3) have been met; and Settlement Class Members should be notified of the terms of the Settlement and of their rights in connection therewith.

Accordingly, Plaintiffs request that the Court: (1) approve the Long-Form Notice and Summary Notice submitted herewith; (2) approve the Class Notice Plan; (3) establish dates for the mailing and publication of Class Notice, the submission of opt out notices and objections to the Settlement, and other relevant deadlines; and (4) schedule a Fairness Hearing to determine whether the Settlement should be given final approval. In addition, Plaintiffs request that the instant litigation and all other Related Lawsuits against the NFL Parties in this Court be stayed pending final approval of the Settlement, and that all Settlement Class Members be enjoined from continuing or commencing litigation, other than for claims for workers’ compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits, in any other forum relating to the facts of the Class Action Complaint unless and until the Settlement Class Member is excluded from the Settlement Class, the Court denies approval of the Class Action Settlement, or the Settlement Agreement is otherwise terminated.

for any reason, or should any portion of the litigation proceed. Section C of the Argument section of this Memorandum discusses some of the anticipated arguments of the respective parties absent a Settlement at this juncture. The inclusion herein of such anticipated arguments is not, and shall not be deemed, an acquiescence, admission, or agreement by any party as to the viability or strength of the opposing party’s argument, should the litigation continue.

I. INTRODUCTION

In July 2011, the first lawsuit was filed by Retired NFL Football Players against the NFL Parties related to the NFL Parties' alleged actions (and inactions) with regard to alleged concussion-related injuries. Since then, more than 4,500 former players have filed substantially similar lawsuits. This Class Action Settlement represents the proposed resolution of these and thousands of other Retired NFL Football Players' claims.

The Class Action Settlement now before the Court for preliminary approval provides that the NFL Parties will make payments totaling \$760 million over a period of years to create a:

- Baseline Assessment Program (“BAP”) Fund that will offer eligible Retired NFL Football Players baseline neuropsychological and neurological evaluations to determine the existence and extent of any cognitive deficits, and in the event retired players are found to suffer from moderate cognitive impairment (“Level 1 Neurocognitive Impairment”) (as defined in Exhibit 1 to the Settlement Agreement), certain supplemental benefits in the form of specified medical treatment and/or evaluation, including, as needed, counseling and pharmaceutical coverage (a maximum of \$75 million will be used to fund the BAP, inclusive of the costs to administer it);
- Monetary Award Fund that will provide cash to Retired NFL Football Players, their representatives, and their families for Qualifying Diagnoses (as defined in Exhibit 1 to the Settlement Agreement) of Level 1.5 Neurocognitive Impairment (early Dementia), Level 2 Neurocognitive Impairment (moderate Dementia), Amyotrophic Lateral Sclerosis (“ALS”), Alzheimer’s Disease, Parkinson’s Disease, and/or Death with chronic traumatic encephalopathy (“CTE”), without

requiring any proof of causation (\$675 million will be used to fund the Monetary Award Fund, inclusive of the costs of administering the Settlement, other than the BAP, and half of the compensation of a Special Master); and

- Education Fund that will fund education programs promoting safety and injury prevention in football players, including youth football players, and the education of Retired NFL Football Players regarding the NFL's medical and disability benefits programs and initiatives (\$10 million will be used exclusively to fund the Education Fund).

Additionally, the NFL Parties will pay the cost of Class Notice (up to \$4 million) and half of the compensation for a Special Master to oversee aspects of the Settlement.

The Settlement is for the benefit of a proposed nationwide Settlement Class, consisting of three types of claimants, each of which is ascertainable based on objective criteria: (1) Retired NFL Football Players; (2) authorized representatives, ordered by a court or other official of competent jurisdiction, of deceased or legally incapacitated or incompetent Retired NFL Football Players ("Representative Claimants"); and (3) close family members of Retired NFL Football Players or any other persons who properly under applicable state law assert the right to sue by virtue of their relationship with the Retired NFL Football Player ("Derivative Claimants"). The Settlement Class is composed of two Subclasses: (1) Retired NFL Football Players who were *not* diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order (and their Representative Claimants and Derivative Claimants); and (2) Retired NFL Football Players who *were* diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order (and their Representative Claimants and Derivative Claimants) and the Representative Claimants of deceased Retired NFL

Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

II. FACTUAL BACKGROUND

A. Plaintiffs' Claims

Plaintiffs, Kevin Turner and Shawn Wooden, are Retired NFL Football Players who allegedly suffered concussive and sub-concussive head injuries while playing football in the NFL. Mr. Turner played eight (8) seasons in the NFL for the New England Patriots and the Philadelphia Eagles. Mr. Wooden played in the NFL for nine (9) seasons for the Miami Dolphins and the Chicago Bears. The Class Action Complaint (the "Complaint"), filed on January 6, 2014, alleges generally that the NFL breached its duties to Plaintiffs by failing to take reasonable actions to protect players from the chronic risks created by concussive and sub-concussive head injuries and that the NFL concealed those risks. Plaintiffs contend that, for many decades, evidence has linked repetitive head injuries to long-term neurological problems in many sports, including football. Plaintiffs further contend that the NFL Parties, as the organizers, marketers, and face of the most popular sport in the United States, in which head injuries are a regular occurrence and in which players are at risk for head injuries, were aware of the evidence and the risks associated with repetitive traumatic brain injuries, but failed to take reasonable action to address the risks and deliberately ignored and actively concealed the information from Plaintiffs. The Complaint seeks injunctive relief, medical monitoring, and financial compensation for the long-term cognitive injuries, financial losses, expenses, and

intangible losses suffered by the Plaintiffs and proposed Class, as a result of the NFL Parties' alleged tortious conduct, including negligence and misrepresentations.³

B. Formation of the NFL Players' Concussion Injury Multidistrict Litigation

On July 19, 2011, seventy-three (73) former NFL players and certain of their wives filed a complaint in the Superior Court of California against the NFL Parties and the Riddell Defendants alleging, among other things, that the NFL Parties breached a duty to protect the health and safety of its players by failing to warn and protect them against the long-term risks associated with football-related concussions. *See Complaint, Maxwell v. National Football League*, BC465842 (Super. Ct. Cal. July 19, 2011). Shortly thereafter, two more groups of former NFL players filed substantially similar complaints in California state court, and a fourth group of plaintiffs filed a substantially similar complaint in the Eastern District of Pennsylvania. *See Complaint, Pear v. National Football League*, LC094453 (Super. Ct. Cal. Aug. 3, 2011); *Complaint, Easterling v. National Football League*, 2:11-cv-05209 (E.D. Pa. Aug. 17, 2011); *Complaint, Barnes v. National Football League*, BC468483 (Super. Ct. Cal. Aug. 26, 2011). The NFL Parties removed the state cases to federal court on the basis of federal preemption under the Labor Management Relations Act ("LMRA").

This multi-district litigation was established on January 31, 2012 when the Judicial Panel on Multidistrict Litigation ("JPML") transferred these four actions to the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1407. *See In re National Football League Players' Concussion Injury Litigation*, MDL 2323, 842 F. Supp.2d 1378 (J.P.M.L. 2012). The JPML

³ The Class Action Complaint includes claims for medical monitoring, negligent misrepresentation, pre-1968 negligence, post-1968 negligence, negligence from 1987-1993, post-1994 negligence, negligent hiring, negligent retention, fraudulent concealment, fraud, wrongful death and survival actions, civil conspiracy based on fraudulent concealment, and loss of consortium.

found that these cases “share factual issues arising from allegations against the NFL stemming from injuries sustained while playing professional football, including damages resulting from the permanent long-term effects of concussions while playing professional football in the NFL” and that “centralization under Section 1407 in the Eastern District of Pennsylvania will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.” *Id.* at 1379. At the time of argument before the JPML in January 2012, there were sixteen potentially related actions pending against the NFL Parties. *Id.* at 1378. Since that time, 123 cases have been directly filed in the MDL or removed from Pennsylvania state court to the MDL, and an additional 163 cases have been transferred to the MDL by the JPML. Currently, there are 290 cases consolidated in the MDL, consisting of both individual lawsuits and class actions. In addition, there are eight cases that remain pending in various state courts, and one case that remains pending in a federal court other than the Eastern District of Pennsylvania, against the NFL Parties that assert similar allegations to those asserted in the MDL proceedings.

C. Proceedings in this Court

The Court’s Case Management Order 1 set a date of April 25, 2012 for the initial conference of this MDL. At the April 25 status conference, the Court selected Christopher A. Seeger of Seeger Weiss LLP as Plaintiffs’ Co-Lead Counsel for the MDL proceedings, and requested that another co-lead counsel from a Philadelphia-based firm also be selected. Docket Entry (“D.E.”) # 64. Plaintiffs selected Sol Weiss of Anapol Schwartz as Co-Lead Counsel. D.E. # 72. Plaintiffs also created a Plaintiffs’ Executive Committee (“PEC”) and Steering Committee composed of various of the counsel for plaintiffs in the cases pending before the Court, which the Court approved. *Id.* The PEC includes proposed Class Counsel, Gene Locks

and Steven C. Marks, and the Steering Committee includes proposed Subclass Counsel, Arnold Levin and Dianne M. Nast.

The Court established a schedule for Plaintiffs to file Master Administrative Complaints and for the NFL Parties to brief the threshold legal issue of whether Plaintiffs' claims were preempted by federal labor law. D.E. # 64. Plaintiffs filed a Master Administrative Long-Form Complaint, D.E. # 83, and a Master Administrative Class Action Complaint for Medical Monitoring, D.E. # 84, on June 7, 2012. Plaintiffs then filed an Amended Master Administrative Long-Form Complaint, D.E. # 2642, on July 17, 2012. The NFL Parties filed motions to dismiss Plaintiffs' Master Administrative Complaints on preemption grounds on August 30, 2012, D.E. ## 3589, 3590, and Plaintiffs opposed, D.E. ## 4130-34. The NFL Parties filed replies, D.E. ## 4254-55, and Plaintiffs' sur-replies closed the briefing, D.E. ## 4589, 4591. The Court heard oral argument on the motions on April 9, 2013, and the Court's ruling remains pending.

D. Mediation

On July 8, 2013, the Court ordered Plaintiffs and the NFL Parties to enter mediation. The Court appointed retired United States District Court Judge Layn R. Phillips as the mediator, and ordered that Judge Phillips report back to the Court on or before September 3, 2013, with the results of mediation. The Court held its ruling on the NFL Parties' motions to dismiss on preemption grounds in abeyance until the September 3, 2013 deadline, and instructed the Settling Parties and their counsel to refrain from publicly discussing the mediation process or disclosing any discussions they may have as part of that process, without further order of the Court. In addition to proposed Co-Lead Class Counsel for Plaintiffs, Christopher A. Seeger and Sol Weiss, proposed Class Counsel, Steven C. Marks and Gene Locks, and proposed Subclass Counsel, Arnold Levin and Dianne M. Nast, were brought into the mediation on behalf of Plaintiffs.

Following his appointment by the Court, Judge Phillips actively supervised and participated in the mediation process, and he regularly kept the Court apprised of the status of the process. Judge Phillips presided over numerous negotiation/mediation sessions, including in-person and telephonic meetings with counsel, either jointly or in separate groups. The mediation process culminated in the execution of a Term Sheet on August 29, 2013. *See Declaration of Mediator and Former United States District Court Judge Layn R. Phillips attached to the Motion for Preliminary Approval and Class Certification (“Phillips Declaration”)* as Exhibit D. Thereafter, the Settling Parties negotiated the definitive Settlement Agreement submitted herewith for Preliminary Approval.

E. Public Announcement of the Proposed Settlement

On August 29, 2013, the Court announced that “in accordance with the reporting requirements in [its] order of July 8, 2013, the Honorable Layn Phillips, the court-appointed mediator, informed [the Court] that the plaintiffs and the NFL defendants had signed a Term Sheet incorporating the principal terms of a settlement.” D.E. # 5235. In its Order, the Court reserved judgment on the fairness and adequacy of the Settlement pending the Settling Parties’ presentation to the Court of the Settlement Agreement, along with motions for preliminary and final approval. *Id.*

F. Court Appointment of a Special Master

On December 16, 2013, pursuant to Fed. R. Civ. P. 53, the Court appointed Perry Golkin to serve as Special Master to assist the Court in evaluating the financial aspects of the proposed settlement in view of its financial complexities. Mr. Golkin has agreed to serve in this capacity without compensation. All expenses reasonably necessary to fulfill his duties will be shared

equally by the Plaintiffs and the NFL Parties prior to final approval, and the allocation may be adjusted at the time of final approval.

It is anticipated that Mr. Golkin's appointment as Special Master will be extended, or someone else will be appointed to serve as the Special Master at final approval. As per the Settlement Agreement, that individual will serve a five-year term (which may be extended by the Court), and will receive compensation.

III. MATERIAL TERMS OF THE SETTLEMENT

A. Settlement Class and Subclasses

The Settlement provides that the NFL Parties shall pay \$760 million, plus up to \$4 million for Class Notice,⁴ for the benefit of a nationwide Settlement Class consisting of three types of Claimants:

- (1) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club (“Retired NFL Football Players”);
- (2) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and
- (3) Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue

⁴ In addition, the Settlement provides that the NFL Parties and the Monetary Award Fund will share equally the annual compensation of the Special Master, which shall not exceed \$200,000, for a five-year term, plus any extensions by the Court.

independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player (“Derivative Claimants”).

The Settlement Class consists of two Subclasses: Subclass 1 is defined as Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order, and their Representative Claimants and Derivative Claimants; and Subclass 2 is defined as Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE. A Qualifying Diagnosis is defined as Level 1.5 Neurocognitive Impairment (early Dementia), Level 2 Neurocognitive Impairment (moderate Dementia), Alzheimer’s Disease, Parkinson’s Disease, ALS, and/or Death with CTE (post-mortem diagnosis prior to the date of the Preliminary Approval and Class Certification Order). *See Exhibit 1 (Injury Definitions) to Settlement Agreement.*

The proposed Settlement Class is clearly defined. Membership is ascertainable from the NFL Parties’ records, the NFL’s pension plans, and other objective criteria. Current NFL Football players are *not* included in the proposed Settlement Class. Additionally, persons who tried out for a Member Club or team of the American Football League, World League of American Football, NFL Europe League or NFL Europa League, but did not make a preseason, regular season or postseason roster, practice squad, developmental squad, or taxi squad, are *not* included in the proposed Settlement Class.

B. Settlement Benefits

The proposed Settlement provides three potential sources of benefits for Settlement Class Members. First, the BAP provides eligible Retired NFL Football Players the opportunity to obtain baseline neuropsychological and neurological examinations within a specified time period to determine whether they suffer from any cognitive impairment, and if so, to what degree. For players diagnosed with Level 1 Neurocognitive Impairment,⁵ BAP Supplemental Benefits will be provided based on need, and may include medical treatment and/or examination by Qualified BAP Providers, counseling and pharmaceuticals. Second, Retired NFL Football Players diagnosed with Level 1.5 Neurocognitive Impairment (early Dementia),⁶ Level 2 Neurocognitive

⁵ Level 1 Neurocognitive Impairment is defined as follows:

- (a) The following are the diagnostic criteria for Level 1 Neurocognitive Impairment:
 - (i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a decline in cognitive function;
 - (ii) Evidence of moderate cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;
 - (iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating scale Category 0.5 (Questionable) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and
 - (iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) Level 1 Neurocognitive Impairment, for the purposes of this Settlement Agreement, may only be diagnosed by Qualified BAP Providers during a BAP baseline assessment examination, with agreement on the diagnosis by the Qualified BAP Providers.

⁶ Level 1.5 Neurocognitive Impairment is defined to be:

- (a) For Retired NFL Football Players diagnosed through the BAP:
 - (i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function;
 - (ii) Evidence of moderate to severe cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;
 - (iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 1.0 (Mild) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and
 - (iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

Impairment (moderate Dementia),⁷ ALS, Alzheimer's Disease, or Parkinson's Disease, and representatives of certain deceased Retired NFL Football Players diagnosed post-mortem with CTE⁸ will be eligible for a cash Monetary Award from the Monetary Award Fund, based on the retired player's age at the time of diagnosis, the number of NFL Football seasons played, and other applicable offsets agreed to by the Settling Parties. Representative and Derivative Claimants may apply for a Monetary Award as well. Third, the Settlement will establish an Education Fund to fund education programs promoting safety and injury prevention with regard to football players, including safety-related initiatives in youth football, and to educate Retired

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- (b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician that the Retired NFL Football Player suffers from neurocognitive impairment consistent with the diagnostic criteria for Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia.
 - (c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, that the Retired NFL Football Player suffered from neurocognitive impairment consistent with the diagnostic criteria for Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia.

⁷ Level 2 Neurocognitive Impairment is defined to be:

- (a) For Retired NFL Football Players diagnosed through the BAP:
 - (i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function;
 - (ii) Evidence of severe cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;
 - (iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 2.0 (Moderate) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and
 - (iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.
- (b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician that the Retired NFL Football Player suffers from neurocognitive impairment consistent with the diagnostic criteria for Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia.
- (c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, that the Retired NFL Football Player suffered from neurocognitive impairment consistent with the diagnostic criteria for Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia.

⁸ ALS, Alzheimer's Disease, Parkinson's Disease and Death with Chronic Traumatic Encephalopathy are defined specifically in the Injury Definitions attached as Exhibit 1 to the Settlement Agreement.

NFL Football Players regarding the NFL's medical and disability programs and other educational programs and initiatives.

Importantly, the Settlement does *not* require Settlement Class Members to prove that the Retired NFL Football Player's cognitive injuries were caused by NFL-related concussions or sub-concussive head injuries. Upon timely submission of a complete Claim Package, the Settlement Class Member will be eligible to receive benefits in accordance with the Settlement Agreement.

Registration for Settlement benefits will be overseen by the Claims Administrator, who will establish and administer both online and hard copy registration methods. Unless good cause is shown, individuals must register within 180 days from the date that the Claims Administrator provides notice of registration methods and requirements. Purported Settlement Class Members and the NFL Parties, in certain circumstances, may challenge registration determinations to the Claims Administrator and may appeal that determination to the Court (which may, in its discretion, refer the matter to the Special Master), whose decision shall be final and binding.

Notably, Retired NFL Football Players are not precluded from participating in the Settlement as a result of having received benefits related to neurocognitive injuries pursuant to benefit programs provided under a Collective Bargaining Agreement ("CBA") with the NFL (*e.g.*, the 88 Plan) or because they signed releases and covenants not to sue the NFL pursuant to the Neuro-Cognitive Disability Benefit under Article 65 of the 2011 CBA. The NFL Parties have agreed not to assert any defense or objection to a Settlement Class Member's receipt of benefits under the Settlement Agreement on the ground that he executed the Article 65 release and covenant not to sue. As discussed below, apart from and in addition to Settlement benefits,

Retired NFL Football Players are entitled to seek all applicable bargained-for benefits in the Collective Bargaining Agreements with the NFL.

1. Baseline Assessment Program

The Settlement will create a BAP to evaluate retired players objectively for evidence of cognitive decline and provide medical treatment and further testing for any player found to be suffering from Level 1 Neurocognitive Impairment. In addition to detecting any cognitive impairment, the results of BAP examinations can be used as a comparison against any future tests to determine whether a Retired NFL Football Player's cognitive abilities have deteriorated. The BAP examinations also serve to inform Retired NFL Football Players and their families of the player's current level of cognitive functioning. The NFL Parties will make an initial deposit of \$35 million to fund the BAP, and will pay an additional \$40 million to continue funding the BAP, as necessary.

A BAP Administrator will be appointed to set up a network of qualified medical providers ("Qualified BAP Providers") to administer the baseline assessment examinations for Retired NFL Football Players. A Special Master will be appointed for a 5-year term to oversee the BAP Administrator, among other responsibilities.⁹

All Retired NFL Football Players who are credited with at least one-half of an Eligible Season, as described below, and who timely register to participate in the Class Action Settlement, may participate in the BAP and receive a baseline assessment examination. A

⁹ In addition to overseeing the BAP Administrator, the Special Master will oversee the functions of the Claims Administrator, appointed to process claims for Monetary Awards, as described below. At the expiration of the 5-year term (unless the term is extended), the Special Master's role and responsibilities will revert to the Court. The NFL Parties have agreed to pay one-half of the compensation of the Special Master, which is capped at \$200,000 per year. The BAP Fund will pay the compensation, reasonable costs and expenses of the BAP Administrator. The Monetary Award Fund will pay the compensation, reasonable costs and expenses of the Claims Administrator, the reasonable costs and expenses of the Special Master, and the other half of the Special Master's compensation.

baseline assessment examination includes a detailed, standardized neuropsychological examination performed by a neuropsychologist certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, and a basic neurological examination performed by a board-certified neurologist. The deadline for receiving a baseline assessment examination depends on the age of the Retired NFL Football Player as of the Effective Date of the Settlement Agreement. Retired NFL Football Players 43 or older as of the Effective Date, and who elect to participate in the BAP, must receive the baseline assessment examination within two years of the Effective Date. Retired NFL Football Players under the age of 43 as of the Effective Date, and who elect to participate in the BAP, must receive the baseline assessment examination within 10 years after commencement of the BAP, or before they turn 45, whichever occurs first. In the event a Retired NFL Football Player who is a member of Subclass 1 does not participate in the BAP, he remains eligible for a Monetary Award if he develops a Qualifying Diagnosis, except that any such Monetary Award will be reduced by ten percent (except for a diagnosis of ALS), unless the Retired NFL Football Player received his Qualifying Diagnosis prior to his deadline to receive a BAP baseline assessment examination.

Retired NFL Football Players who are diagnosed during a BAP baseline assessment examination with Level 1 Neurocognitive Impairment will receive BAP Supplemental Benefits that entitle them to medical testing and/or treatment, including, as needed, counseling and pharmaceutical coverage, within a network of Qualified BAP Providers and Qualified BAP Pharmacy Vendors. If Retired NFL Football Players are diagnosed with Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment, during a BAP baseline

assessment examination, they may seek a cash Monetary Award from the Monetary Award Fund.

A web portal linked to the Settlement Website will be set up to assist Settlement Class Members with access to BAP services. All eligible Retired NFL Football Players will be encouraged to take advantage of the BAP.

2. Monetary Awards and Derivative Claimant Awards

The largest component of the Settlement is a \$675 million Monetary Award Fund, which funds, in part, provide for payment of cash Monetary Awards and Derivative Claimant Awards to Retired NFL Football Players diagnosed with a Qualifying Diagnosis, as set forth in the Injury Definitions (attached as Exhibit 1 to the Settlement Agreement), and their Representative and Derivative Claimants. A Qualifying Diagnosis is defined as Level 1.5 Neurocognitive Impairment (early Dementia), Level 2 Neurocognitive Impairment (moderate Dementia), Alzheimer's Disease, Parkinson's Disease, ALS and/or Death with CTE (post-mortem diagnosis prior to the date of the Preliminary Approval and Class Certification Order). Qualifying Diagnoses shall be made by appropriately credentialed physicians as set forth in the Injury Definitions (*id.*). Details regarding the Retired NFL Football Player's Qualifying Diagnosis must be provided with the Settlement Class Member's Claim Package or Derivative Claim Package and will form the basis for the Claims Administrator's review and award determination.

a) Maximum Awards

The *maximum* Monetary Award for each Qualifying Diagnosis category is as follows:

Qualifying Diagnosis	Maximum Award
ALS	\$5 million
Death with CTE	\$4 million
Alzheimer's Disease	\$3.5 million
Parkinson's Disease	\$3.5 million
Level 2 Neurocognitive Impairment	\$3 million
Level 1.5 Neurocognitive Impairment	\$1.5 million

Monetary Awards will be processed by a Claims Administrator appointed by the Court. The costs of the Claims Administrator will be paid from the Monetary Award Fund. Monetary Awards are based on the particular Qualifying Diagnosis that the retired player receives and will be downwardly adjusted based on the retired player's age at the time of that diagnosis and all other applicable Offsets. Generally, the younger a Retired NFL Football Player is when he receives a Qualifying Diagnosis, the greater the base compensation for the Monetary Award. *See* Monetary Award Grid, at Exhibit 3 to the Settlement Agreement. Conversely, the older a Retired NFL Football Player is when he receives a Qualifying Diagnosis, the lower the base compensation for the Monetary Award. At age 80 or older, the base Monetary Award for ALS becomes fixed at \$300,000, before application of Offsets. *Id.* The base Monetary Awards for Retired NFL Football Players diagnosed at age 80 or older with Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or Death with CTE are fixed at \$50,000, before application of Offsets, and for Level 1.5 Neurocognitive Impairment, the base award is fixed at \$25,000, before application of Offsets. *Id.* The Award levels based on a Retired NFL Football Player's age at the time of the Qualifying Diagnosis and the percentage reduction of any applicable Offsets are laid out in the Settlement Agreement and Monetary Award Grid attached thereto.

All Monetary Awards will be adjusted upwards annually for inflation, up to 2.5% per year, the precise amount subject to the sound judgment of the Special Master (or the Claims Administrator after expiration of the term of the Special Master).

b) Supplemental Awards

If, after receiving an initial Monetary Award, a Retired NFL Football Player becomes eligible for a larger Award (after Offsets) because of a different Qualifying Diagnosis, the retired player will be provided with a Supplemental Monetary Award to ensure that the retired player receives the maximum award to which he is entitled.

c) Credited Eligible Seasons

Retired NFL Football Players who are credited with at least five Eligible Seasons will receive the maximum Monetary Award for their injury and their age, absent other applicable Offsets. For Retired NFL Football Players with fewer than five Eligible Seasons, the Monetary Award will be reduced anywhere between 10% (for players with 4.5 Eligible Seasons) and 97.5% (for players with 0 Eligible Seasons), as set forth in the following chart.

Number of Credited Eligible Seasons	Percentage of Reduction in Monetary Award
4.5	10%
4.0	20%
3.5	30%
3.0	40%
2.5	50%
2.0	60%
1.5	70%
1.0	80%
0.5	90%
0	97.5%

Pursuant to the Settlement Agreement, a Retired NFL Football Player earns one Eligible Season for each season in which the retired player was on an NFL or AFL Member Club's

Active List on the date of three or more regular season or postseason games, or on the date of one or more regular or postseason games and then spent two regular or postseason games on a Member Club's injured reserve list or inactive list due to a concussion or head injury. A Retired NFL Football Player earns one-half of an Eligible Season for each season in which the player was on an NFL or AFL Member Club's practice, developmental, or taxi squad for at least eight games, but for which he did not otherwise earn an Eligible Season. Time spent playing for the World League of American Football, NFL Europe League, and NFL Europa League does not count towards, and is specifically excluded from, the calculation of an Eligible Season. To determine the total number of Eligible Seasons credited to a player, all of the earned Eligible Seasons and half Eligible Seasons are summed together. For example, if a retired player has earned two Eligible Seasons and three half Eligible Seasons, he will be credited with 3.5 Eligible Seasons, and his award will be reduced by 30%.

d) Offsets

In addition to Offsets for shorter football careers, Monetary Awards may be reduced significantly (by 75%) for Retired NFL Football Players who suffered a medically diagnosed stroke or Traumatic Brain Injury (such as in an automobile accident), after commencing NFL Football play and prior to receiving the Qualifying Diagnosis reflecting a presumptive attribution of the retired player's injury to non-NFL Football causes. Retired NFL Football Players subject to these Offsets will have the opportunity to present clear and convincing evidence to the Claims Administrator that the stroke or brain injury is not related to the Qualifying Diagnosis in order to avoid the Offset.

In addition, as described above, a 10% reduction in Monetary Awards applies to those Qualifying Diagnoses obtained by Subclass 1 members outside the BAP (except for diagnoses of

ALS), unless the Retired NFL Football Player participates in the BAP or receives his Qualifying Diagnosis prior to his deadline to receive a BAP baseline assessment examination. The purpose of this Offset is to encourage Retired NFL Football Players to make use of the BAP.

e) Lien Resolution

Once the Monetary Awards are calculated by the Claims Administrator, the Lien Resolution Administrator will administer the process for the identification and settlement of all applicable and legally enforceable liens, which may include, among others, those related to state or federal governmental payors, Medicare Parts A and B (as contemplated by the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)), Medicare Part C or Part D plans, Medicaid, and other state or federal governmental healthcare programs with statutory reimbursement or subrogation rights (such as TRICARE, the Department of Veterans Affairs, and Indian Health Services).

f) Derivative Claimant Awards

Derivative Claimants will be entitled to 1% of the Monetary Award received by the Retired NFL Football Players or Representative Claimants (for deceased, incompetent, or incapacitated retired players) through whom the relationship is the basis of the claim (such that the Retired NFL Football Player or Representative Claimant will receive 99% of the Award). If there are multiple Derivative Claimants, the 1% award will be divided among them based on the laws of the state where the Retired NFL Football Player to whom they are related is domiciled.

g) Appeals

Settlement Class Members, the NFL Parties, and Co-Lead Class Counsel have a right to appeal either a determination of whether a Settlement Class Member is entitled to a Monetary Award or the amount of the Award. Appeals will be overseen by the Court, which may seek the

advice of a panel of physicians appointed by the Court, as defined in Section 2.1(h) of the Settlement Agreement (“Appeals Advisory Panel”). The Court may, in its discretion, refer the appeal to the Special Master, who also may seek advice from the Appeals Advisory Panel. Appellants must present clear and convincing evidence in support of the appeal. To discourage appeals that lack merit, Settlement Class Members will be charged a fee of \$1,000 to appeal their claim determination; however, this sum will be refunded if the appeal is successful. The NFL Parties may appeal up to ten (10) Monetary Award or Derivative Claimant Award determinations per year and may appeal more if good cause is shown. If the NFL Parties’ appeal is unsuccessful, they will pay all administrative costs directly resulting from the appeal, and reasonable attorneys’ fees, if any, provided that in no event will the total amount paid by the NFL Parties exceed \$2,000.

Co-Lead Class Counsel also may appeal up to ten (10) Monetary Award or Derivative Claimant Award determinations per calendar year on the basis of good cause.

h) Funding and Additional Contingent Contribution

The Settling Parties consulted extensively over many months with their own medical experts, actuaries, and economists, and with the assistance of the court-appointed mediator. *See Phillips Declaration, at ¶ 8.* Plaintiffs’ economists conducted thorough analyses regarding funding the Settlement to ensure that there would be enough money to provide benefits to all eligible Settlement Class Members, taking into account the size of the proposed Settlement Class and projecting the incidence rates of each Qualifying Diagnosis over the term of the Settlement. After hard-fought negotiations, the Settling Parties arrived at an aggregate sum that proposed Co-Lead Class Counsel, Class Counsel and Subclass Counsel believe is sufficient to compensate all

Retired NFL Football Players who may be diagnosed with Qualifying Diagnoses and their Representative and Derivative Claimants.

Within two years after the Effective Date of the Settlement Agreement, over \$300 million of the \$675 million earmarked for the Monetary Award Fund will be deposited. The NFL Parties shall make additional deposits over the next 17 years, until the Monetary Award Fund is fully funded. If the value of the Monetary Award Fund dips below \$50 million at any time, the NFL Parties will deposit additional monies into the fund, up to their maximum obligation of \$675 million, to bring the fund back to a level of at least \$50 million. The Monetary Award Fund will be available for a term of 65 years, which proposed Co-Lead Class Counsel, Class Counsel and Subclass Counsel expect to be long enough to compensate the youngest Retired NFL Football Player in the event he develops a Qualifying Diagnosis. The Settlement further provides that in the event of a funding shortfall, the NFL Parties will contribute up to an additional \$37.5 million to the Monetary Award Fund.

3. Education Fund

The NFL Parties have agreed to contribute \$10 million to establish an Education Fund for the benefit of the Settlement Class. This fund will support education, as directed by the Court with input from Co-Lead Class Counsel, Counsel for the NFL Parties, and medical experts, into cognitive impairment, safety and injury prevention with regard to football players. Subject to the reasonable informed consent of Retired NFL Football Players, in compliance with applicable privacy and health laws, and any other customary authorization, medical data generated through the Class Action Settlement will be made available for use by those conducting medical research in cognitive impairment, safety and injury prevention. In addition, the Settling Parties have agreed that a portion of the Education Fund will be used to fund education programs benefiting

Retired NFL Football Players and safety-related initiatives in youth football, among other programs, to be approved by the Court. The fund also will have an education component that will inform Retired NFL Football Players and their families about the NFL's medical and disability benefits programs and other programs and initiatives that would inure to their benefit.

4. Preservation of Collective Bargaining Benefits and Claims for Workers' Compensation

The Settlement preserves Retired NFL Football Players' rights to pursue any and all benefits under the current 2011 NFL Collective Bargaining Agreement, the 88 Plan, and any other current or future applicable collective bargaining agreement. Participation in the Settlement will not affect a Retired NFL Football Player's ability to pursue any bargained-for benefits, including the NFL's Neuro-Cognitive Disability Benefit.

In addition, the Settlement will ensure that the provision included in Article 65 of the current CBA, Section 2—requiring that players execute a release of claims and covenant not to sue in order to be eligible for the NFL's Neuro-Cognitive Disability Benefit—will not be enforced or used against the Settlement Class Members in connection with this Settlement, except if they exclude themselves from the Settlement Class. The NFL Parties have agreed not to enforce that release with regard to Settlement benefits to the extent a Settlement Class Member previously signed it when submitting an application. Without the NFL's agreement on this point, certain Retired NFL Football Players would be barred from receiving any Settlement benefits and would be limited to benefits made available under the CBA only.

Moreover, as part of the release that Settlement Class Members will provide to the NFL Parties in exchange for the former's participation in the Settlement and right to Settlement benefits, Retired NFL Football Players will *not* be required to release or dismiss claims for

workers' compensation or claims alleging entitlement to NFL CBA Medical and Disability Benefits.

5. Waiver of Causation, Statutes of Limitations, and Other Defenses

The Settlement eliminates many serious obstacles that Retired NFL Football Players would have faced in the litigation, as summarized below in more detail. Moreover, even within the confines of the Settlement, Retired NFL Football Players (and their Representative Claimants) with a Qualifying Diagnosis do not have to prove or submit any evidence of causation in order to receive Monetary Awards. IN OTHER WORDS, THEY DO NOT NEED TO SHOW THAT THEIR QUALIFYING DIAGNOSES RESULTED FROM CONCUSSIONS RELATED TO NFL FOOTBALL. They only need to provide a qualified medical professional's diagnosis of a Qualifying Diagnosis and timely and completely submit the required paperwork and proof, as outlined in the Settlement Agreement.

In addition, currently undiagnosed Retired NFL Football Players can seek Monetary Awards if they later receive a Qualifying Diagnosis during the term of the Monetary Award Fund. Retired NFL Football Players who already received a Qualifying Diagnosis by the time of the issuance of the Preliminary Approval and Class Certification Order are entitled to Monetary Awards regardless of when they played NFL Football or how long ago they may have received a concussion, except for Retired NFL Football Players who died prior to January 1, 2006. No Monetary Awards will be made where the Retired NFL Football Player died prior to January 1, 2006, unless the Court determines that the claim of the pre-2006 decedent would not be barred by the applicable statute of limitations. Absent the Settlement, these claimants would confront the same statute of limitations hurdle on a wrongful death claim.

6. Attorneys' Fees

The Settling Parties did not discuss the issue of attorneys' fees at any point during the mediation sessions (except to defer the issue), until *after* an agreement in principal was reached on all material Settlement terms providing benefits to the Settlement Class and Subclass Members and *after* the Term Sheet was inked, in accordance with *Prandini v. National Tea Co.*, 585 F.2d 47, 53 (3d Cir. 1978). The NFL Parties have since agreed not to object to a petition for an award of attorneys' fees and reasonable incurred costs by Co-Lead Class Counsel, Class Counsel and Subclass Counsel, provided the amount requested does not exceed \$112.5 million. The \$112.5 million to be paid by the NFL Parties is *in addition* to the \$760 million that will fund the BAP Fund, the Monetary Award Fund and the Education Fund, and the up to \$4 million for Class Notice and one-half of the compensation for the Special Master. Unlike traditional common fund cases where attorneys' fees are obtained directly from the common fund, the Settlement Class is further benefitted by the separate payment of attorneys' fees by the NFL Parties.

The Court will determine the amount of the Class attorneys' fee and cost award in accordance with applicable common benefit fee jurisprudence. Settlement Class Members will have an opportunity to comment on or object to these fees at an appropriate time. Having the NFL Parties pay Class attorneys' fees and reasonable incurred costs separate from the \$760 million is another very significant benefit to Settlement Class Members.

C. Releases, Covenant Not To Sue And Bar Order

In exchange for the benefits provided under the Settlement Agreement, Settlement Class Members and their related parties (the "Releasors") will release all claims and dismiss with prejudice all actions and claims against, and covenant not to sue, the NFL Parties and others (the

“Released Parties”) in this litigation and all Related Lawsuits in this Court and other courts, in accordance with the terms of Article XVIII set forth in the Settlement Agreement.

Class Members that receive Monetary Awards also will be required to dismiss pending suits and/or forebear from bringing litigation relating to cognitive injuries against the National Collegiate Athletic Association and any other collegiate, amateur, or youth football organizations and entities, in accordance with Section 18.5 of the Settlement Agreement, since they will have been compensated for their cognitive injuries in this Settlement.

As a condition to approval of the Settlement, the Settling Parties also intend to move the Court for a bar order and judgment reduction provision, as part of the Final Order and Judgment. *See Exhibit 4 to the Settlement Agreement.* The bar order will bar other parties from seeking indemnification or contribution from the Released Parties for claims relating to this litigation.

Plaintiffs’ claims against the Riddell Defendants will *not* be released or dismissed by the Settlement.

D. Class Notice

The Settlement terms are complex, but must and will be explained in simple, clear notices to the Settlement Class. To effectuate such notice, Co-Lead Class Counsel has worked with Katherine Kinsella, President of Kinsella Media, LLC, an advertising and legal notification firm specializing in the design and implementation of notification plans. *See Declaration of Katherine Kinsella (“Kinsella Declaration”).* The Settling Parties estimate that the number of readily identifiable Settlement Class Members is over 20,000. In comparison, the settlement class in *Dryer v. NFL*,¹⁰ which was finally approved on November 4, 2013, *Dryer v. National Football*

¹⁰ The *Dryer* case was finally approved in the federal district court of Minnesota. *Dryer* is a certified settlement class action, alleging that the NFL’s use of former players’ identities after the players’ retirement violated their state law rights of publicity, the Lanham Act, and other state law provisions. The certified settlement class is “any

League, Civil No. 09-2182-PAM/AJB, 2013 WL 5888231 (D. Minn. Nov. 1, 2013) and D.E. # 432, has a total of 27,347 retired players, with 21,289 living players and 6,058 deceased players. Co-Lead Class Counsel, Class Counsel and Subclass Counsel believe there are approximately an additional 2,000 AFL, World League of American Football, NFL Europa and NFL Europe players who are in the proposed Settlement Class, and who are not in the *Dryer* case, and several thousand other Settlement Class Members who were on preseason rosters only.

Many Retired NFL Football Players will be reachable through direct individual notice, due to the existence, through the NFL Parties and the NFL Players Association, of multiple lists identifying former NFL players. These sources include: the current Bert Bell/Pete Rozelle NFL Player Retirement Plan pension list; Retired NFL Football Player address data collected and used in the *Dryer* case; a list of NFL players active through 2010 compiled by STATS; a list of former NFL Europe, World League and NFL Europa players; and a list of former AFL players. Co-Lead Class Counsel will utilize: (1) the social security death index to determine additional deceased Retired NFL Football Players; (2) LexisNexis's relative search to find the nearest relative or last person to live with the deceased Retired NFL Football Player; and (3) the national change of address database, as applicable, to get the most recent address for Settlement Class Members.

The proposed Notice Plan attached to the Kinsella Declaration (which is Exhibit C to the Motion) has multiple features to ensure compliance with Due Process. The Plan will include: (1) direct individual notice to identifiable Retired NFL Football Players and heirs of deceased Retired NFL Football Players; (2) paid publication notice in various media sources; and

Retired Player, and if a Retired Player is deceased, all of his respective heirs, executors, administrators, beneficiaries, successors, and assigns who own or control his Publicity Rights." D.E. # 262-1, at ¶¶ 1, 6.

(3) notice to targeted third parties, such as nursing homes, designed to reach additional retirees who may be incapacitated or incompetent.

The Long-Form Notice included in the direct mailings will describe the Settlement in plain, easily understood language and advise Settlement Class Members of their rights regarding opting out of the Settlement and/or objecting thereto. The notice will explain to Settlement Class Members that it is necessary for them to register in order to be eligible for Settlement benefits. Notice will be sent to Settlement Class Members via first-class mail.

For paid media coverage, Co-Lead Class Counsel plan to use print, television, radio and Internet advertisements to reach Settlement Class Members, including Retired NFL Football Players, legal representatives, spouses, family members and heirs. Print advertisements will include full-page color ads in selected consumer magazines. Thirty-second television spots will appear on the NFL Network, as well as cable and broadcast outlets. Radio spots also will be used. Internet ads using non-static pre-roll, flash, and rich media are also planned. The Notice Plan will be implemented after Preliminary Approval of the Proposed Settlement, commencing with the posting of the notice on the Court's website. If and when Final Approval is granted, additional notice will be used to inform Settlement Class Members of the dates of the registration period.

IV. ARGUMENT

A. Preliminary Approval of the Settlement Is Appropriate

There exists a strong judicial policy favoring pretrial settlement of complex class action lawsuits, where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding

public interest in settling class action litigation and it should therefore be encouraged.”). Settlement is favored, in part, because of the complexity and size of class actions and the ability of a settlement to conserve judicial resources while providing meaningful relief. *See Ehrheart*, 609 F.3d at 594-95 (the presumption in favor of settlement is especially strong in class actions and other complex cases where substantial juridical resources can be conserved by avoiding formal litigation.”) (citation and quotation marks omitted).

These principles were most recently reinforced forcefully by the Third Circuit in *Sullivan v. DB Investors, Inc.*, 667 F.3d 273, 311 (3d Cir. 2010) (*en banc*). There, the Third Circuit sitting *en banc* recognized, especially in class actions, the “strong presumption in favor of voluntary settlement agreements.” *Id.* Although *Sullivan* affirmed the class settlement of a lawsuit involving antitrust claims, in his concurring opinion, Judge Scirica commented upon personal injury class action settlements. Judge Scirica noted that in the immediate aftermath of *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997) or *Ortiz v. Fibreboard Corp.*, 52 U.S. 815 (1999), personal injury class settlements were thought to be difficult to achieve. *Id.* at 334. Recognizing this early reaction to *Amchem* to be erroneous, Judge Scirica observed anecdotally a movement away from class settlements. He noted that in the *Vioxx* litigation, before the Honorable Eldon E. Fallon, the parties settled personal injury claims in a fashion that was not subject to judicial scrutiny under Rule 23. *See In re Vioxx Products Liability Litig.*, MDL No. 1657, Current Developments - November 9, 2007 (E.D. La.), available at <http://vioxx.laed.uscourts.gov/>; *In re Vioxx Products Liability Litig.*, 650 F.Supp.2d 549, 552-53 (E.D. La. 2009)(characterizing the settlement as a “voluntary opt-in agreement”). Despite the fact that the *Vioxx* litigation settled on a non-class basis and the problems presented by complex class actions post-*Amchem*, Judge Scirica recognized that public policy strongly supports the

resolution of mass claims, such as those presented here, on a class basis that provides the structural, procedural and substantive guarantees of fairness. Otherwise, parties seeking to settle mass harm claims would be forced to do so outside direct judicial supervision, contrary to the public interest. *Id.* at 340.

Proof that litigants are not seeking to avoid scrutiny under Rule 23 in connection with personal injury claims exists within Judge Fallon's courtroom. He recently has approved a flurry of class actions settling personal injury claims. *See In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, 2013 WL 499474, *10 (E.D. La. Feb. 7, 2013) ("After considering all available scientific evidence, the Court finds that the Global Settlement and other pending settlements provide for personal injuries in a manner that is fair, reasonable, and adequate."). Before *Chinese-Manufactured Drywall*, Judge Fallon also had certified a similar property damage and personal injury class action. *See Turner v. Murphy Oil USA, Inc.*, 234 F.R.D. 597 (E.D. La. 2006).

Indeed, one of the largest (if not, the largest and most innovative) personal injury class actions in history occurred within the Third Circuit – *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litig.*, 2000 WL 1222042 (E.D. Pa. Aug. 28, 2000)(C.J. Bechtle & Bartle). The Third Circuit has referred to this multi-state personal injury settlement as “a landmark effort to reconcile the rights of millions of individual plaintiffs with the efficiencies and fairness of a class-based settlement.” *In re Diet Drugs*, 582 F.3d 524, 544 n. 37 (3d Cir. 2009). Not surprisingly, the Supreme Court in *Amchem* allowed for the possibility of personal injury class actions in appropriate circumstances. *See Amchem*, 521 U.S. at 625 (“the

text of the Rule does not categorically exclude mass tort cases from class certification.”).¹¹ The structure of this multi-state personal injury class is remarkably similar to *the Diet Drug* settlement, although it is by far smaller and less prolix.

Federal Rule of Civil Procedure 23(e) requires court approval for any compromise of a class action. *See Amchem*, 521 U.S. at 617; *Evans v. Jeff D.*, 475 U.S. 717, 726 (1986); *Sullivan*, 667 F.3d at 295; *In re Processed Egg Prods. Antitrust Litig.* (“*Processed Egg*”), 284 F.R.D. 249, 259 (E.D. Pa. 2012). Approval of a class action settlement involves a two-step process. First, counsel submits the proposed terms of settlement to the court for a preliminary fairness evaluation. *See Manual for Complex Litigation*, § 21.632 (4th ed. 2004) (hereinafter “MCL 4th”); *see also* 4 Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS § 11:25,

¹¹ Since *Sullivan* was decided, Judge Jordan, the author of the dissent in *Sullivan*, along with Judges Scirica and Fisher, recently reviewed the settlement of a racial discrimination class action under the Fair Housing Act, 42 U.S.C. § 3605, and the Equal Credit Opportunity Act, 15 U.S.C. §1691. *See Rodriguez v. National City Bank*, 726 F.3d 372 (3d Cir. 2013). The *Rodriguez* class plaintiffs had sought to prove disparate overall impact amongst class members by using a preliminary statistical analyses employing regression analysis of bank loans. Following a mediation, the parties agreed to a class action settlement. The district court (Judge Robreno) preliminarily approved the class and notice issued. Prior to final approval, however, the United States Supreme Court handed down its opinion in *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541 (U.S. 2011). The cases bore many similarities in that the facts alleged in *Rodriguez*, as in *Dukes*, turned on the subjective decision making by multiple individual actors, rather than a uniform policy applied by the defendant to the class as a whole. The district court, applying *Dukes*, found that the allegations of the class complaint could not establish overall impact or any direct policy that applied to the class as a whole. Nor, given the nature of the proposed proof, could the class mechanism establish discrimination by individual loan officers. As such, the district court declined to approve the settlement or certify the class. Although National City Bank initially supported the settlement in the district court, on appeal it switched positions and opposed the settlement. In this unusual procedural posture, the Third Circuit considered whether the settlement was fair, reasonable and adequate, and whether the requirements of FED. R. CIV. P. 23 had been met. Under the deferential standard of review given to a district court decision to certify or to not certify a class, the Court of Appeals affirmed the district court’s discretionary finding that there was insufficient evidence of commonality presented by the class proponent’s preliminary statistical analysis. *Rodriguez*, 726 F.3d at 380-81. The Third Circuit found that plaintiffs “have not shown that [the bank’s employment policy] affected all class members in all regions and bank branches in a common way.” *Id.* at 385. *Rodriguez* and *Dukes* address a situation far different from the present case. Here, unlike in *Dukes* or *Rodriguez*, the Complaint sets out claims and causes of all injuries suffered by class members that are allegedly attributable directly to all the Defendants, with no intermediary actors whose illegal behavior would be the ultimate source of liability. *See infra* at Commonality Section, at Argument Section IV.B.1(b). The Complaint sets out the specific duties allegedly owed by the NFL, the alleged specific breaches of those duties by the NFL, and the consequent harm suffered by the proposed Class. Those are the common issues that define the causes of action in the Class Action Complaint, and they form the basis for the Settlement.

at 38-39 (4th ed. 2002) (hereinafter “NEWBERG ON CLASS ACTIONS”) (endorsing two-step process). If a preliminary evaluation of fairness is made, the second step is to conduct a formal fairness and final approval hearing after notice has been disseminated to the settlement class members.¹² *Id.* At this time, Plaintiffs request only that this Court grant preliminary approval.

A court’s review of preliminary approval is less stringent than during final approval. *See Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007); MCL 4th § 21.63 (2004) (“At the stage of preliminary approval, the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval.”). There need not be a “definitive proceeding on the fairness of the proposed settlement,” and the court must make clear that “the determination permitting notice to members of the class is not a finding that the settlement is fair, reasonable and adequate.” *Processed Egg*, No. 08-md-02002, (E.D. Pa. July 15, 2010) (Order Preliminarily Approving Settlement at 3 n.1) (D.E. #387) (quoting *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983)); *see also In re General Motors Corp. Pick-up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (distinguishing between preliminary approval and final approval); *In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 WL 1068807, at *1-2 (E.D. Pa. May 11, 2004) (same).

¹² The fairness, reasonableness, and adequacy of the settlement are assessed in the second step of the process at a final hearing after settlement class members have had an opportunity to opt out from or object to the settlement. The factors considered for final approval of a class settlement include: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Sullivan*, 667 F.3d at 319-20 (citations omitted).

In determining whether preliminary approval is warranted, the sole issue before the Court is whether:

the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.

Mehling, 246 F.R.D. at 472 (citations omitted); *Mack Trucks, Inc. v. Int'l Union, UAW*, No. 07-3737, 2011 WL 1833108, at *2 (E.D. Pa. May 12, 2011) (stating same standard); *Tenuto v. Transworld Sys.*, No. 99-4228, 2001 WL 1347235, at *1 (E.D. Pa. Oct. 31, 2001) (same); *see also* MCL 4th § 21.633. Under Rule 23, a settlement falls within the “range of possible approval,” if there is a conceivable basis for presuming that the standard applied for final approval—fairness, adequacy and reasonableness—will be satisfied. *See Mehling*, 246 F.R.D. at 472 (at preliminary approval stage, courts inquire as to whether “the settlement appears to fall within the range of possible approval” under Rule 23(e)). In making this preliminary determination, some courts consider whether: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.¹³ *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003); *see also General Motors Corp.*, 55 F.3d at 785.

Here, as explained below, there are no grounds to doubt the fairness of the proposed Settlement and Plaintiffs, without opposition from the NFL Parties, respectfully request that this Court preliminarily approve the proposed Settlement.

¹³ Although some courts list the fourth factor as part of the preliminary evaluation analysis, it is more properly considered at the final fairness hearing, after notice to class members has been disseminated. Nonetheless, while the total number of opt outs cannot be quantified at this time, the participation of Co-Lead Class Counsel, Class Counsel and Subclass Counsel throughout the negotiation process protects the interests of all members of the Settlement Class and supports the presumptive reasonableness and fairness of the Settlement and the settlement process.

1. The Proposed Settlement Is the Product of Good Faith, Extensive Arm's Length Negotiations

Whether a settlement arises from arm's length negotiations is a key factor in deciding whether to grant preliminary approval. *See In re CIGNA Corp. Sec. Litig.*, No. 02-8088, 2007 WL 2071898, at *2 (E.D. Pa. July 13, 2007) (noting that a presumption of fairness exists where parties negotiate at arm's length, assisted by a retired federal judge who was privately retained and served as a mediator); *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439, 444 (E.D. Pa. 2008) (stressing the importance of arms-length negotiations and highlighting the fact that the negotiations included "two full days of mediation"); *In re Auto. Refinishing Paint Antitrust Litig.*, MCL No. 1426, 2004 WL 1068807 , at *2 (E.D. Pa. May 11, 2004) (preliminarily approving class action settlement that "was reached after extensive arms-length negotiation between very experienced and competent counsel"); *see also* NEWBERG ON CLASS ACTIONS § 11:41 (noting that courts usually adopt "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval"). Such is the case here.

The Settling Parties participated in settlement discussions under the auspices of retired United States District Court Judge Layn R. Phillips. *See generally* Phillips Declaration (Exhibit D to this Motion). From the beginning, the sessions involved Plaintiffs' Co-Lead Class Counsel, Christopher A. Seeger and Sol Weiss, and counsel for the NFL Parties. Additionally, proposed Class Counsel, Steven C. Marks and Gene Locks, and Subclass Counsel Arnold Levin and Dianne M. Nast, were brought into the process on behalf of Plaintiffs. Some members of the PEC participated as well. Toward the conclusion of the mediation process, several NFL franchise owners, representing the NFL team owners collectively, and the Commissioner of the

NFL, also were brought into the process. At all times, the negotiations were conducted at arm's length and sometimes the negotiations were quite contentious.

In addition to the Parties within the litigation, multiple consultants were brought in to flesh out the details of an agreement as part of the settlement process. The Settling Parties met with multiple medical, actuarial, and economic experts to determine, develop and test an appropriate settlement framework to meet the needs of Retired NFL Football Players suffering from, or at risk for, the claimed injuries. The Settling Parties discussed settlement structures, baseline testing, and injury categories during the negotiations.

Judge Phillips guided the Settling Parties through a grueling mediation period of nearly two months, during which the Parties attended numerous mediation sessions, and aggressively asserted their respective positions. Although amicable, the discussions were at times contentious, and both sides often required Judge Phillips' input in order to resolve contested issues. See Phillips Declaration, at ¶¶ 5-6. In the end, the Settling Parties arrived at an agreement in principal during hard-fought, contentious and arm's length negotiations.

2. The Investigation of Both Plaintiffs' Claims and the NFL Parties' Defenses Supports Preliminary Approval

Although the Settling Parties have not reached the discovery stage of litigation,¹⁴ proposed Co-Lead Class Counsel, Class Counsel and Subclass Counsel possess adequate information concerning the strengths and weaknesses of the litigation against the NFL Parties. Proposed Co-Lead Class Counsel, Class Counsel and Subclass Counsel thoroughly investigated

¹⁴ Courts have preliminarily approved class action settlements where the litigation is in its early stages and minimal discovery has occurred. See *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 267 (E.D. Pa. 2012) (preliminarily approving class action settlement when "no formal discovery was conducted in this case during the time of the . . . Settlement negotiations or agreement[.]"); see also *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 444 (E.D. Pa. 2008) (preliminarily approving class settlement when parties had not yet conducted discovery on the merits).

the claims brought in the Class Action Complaints, researched and briefed opposition papers in response to the NFL Parties' motions to dismiss on preemption grounds, and exchanged information with the NFL Parties during negotiation and mediation sessions, including expert calculations of damages and Settlement Class Members' injuries. As discussed more fully *infra*, the significant legal challenges for each side, should the litigation continue, support preliminary approval of the proposed Settlement. Proposed Co-Lead Class Counsel, Class Counsel and Subclass Counsel are especially cognizant of the toll imposed upon the plaintiff client base by continued prosecution of litigation towards an uncertain result, in contrast to the certitude presented by the proposed settlement. This factor is a significant incentive to resolve the litigation.

In addition, the proponents of the Settlement are highly experienced in complex class action litigation. The Class and Subclasses are represented by lawyers who have extensive complex class action experience. Proposed Co-Lead Class Counsel, Christopher A. Seeger of Seeger Weiss LLP, and Sol Weiss of Anapol Schwartz, Class Counsel, Gene Locks of Locks Law Firm, and Steven C. Marks of Podhurst Orseck P.A., and Subclass Counsel, Arnold Levin of Levin Fishbein Sedran & Berman and Dianne M. Nast of Nast Law LLC, are all members of the court-appointed PEC and/or the Steering Committee. The Court is familiar with each counsel's experience after the vetting process of the appointment of counsel. They are highly competent counsel, each with decades of experience litigating complex class action and multidistrict cases.

3. There Is No Preferential Treatment of Certain Settlement Class Members and Class Representatives Support the Settlement

Although formal notice of the Settlement has not yet been disseminated, and, therefore, no formal objections have been made, the proposed Settlement treats all Settlement Class Members fairly and does not provide undue preferential treatment to any individual Settlement Class Member or Subclass. The Settlement Class Members—composed of: (1) all Retired NFL Football Players, (2) the legal representatives of deceased, incompetent or incapacitated Retired NFL Football Players, and (3) family members or others with a legal right to sue independently or derivatively based on their relationship to the Retired NFL Football Player—are readily ascertainable and identifiable using objective criteria.¹⁵ All Settlement Class Members are invited to be part of the Settlement Class and no interests are excluded.

Moreover, the Settling Parties created two Subclasses, each with its own representation during the Settlement negotiations to ensure that all Settlement Class Members' interests were protected. Subclass 1 includes Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order, and their Representative and Derivative Claimants. Subclass 2 includes Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the Preliminary Approval and Class Certification Order and their Representative and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnoses prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE. Subclass

¹⁵ This Class definition complies with the requirements of the Third Circuit's recent decision in *Carrera v. Bayer Corp.*, 727 F.3d 300, 306 (3d Cir. 2013), and *Marcus v. BMW of North America, LLC*, 687 F.3d 583, 593 (3d Cir. 2012). This is *not* a case where "class members are impossible to identify without extensive and individualized fact-finding or 'mini-trials[.]'" *Marcus*, 687 F.2d at 593.

Counsel for the separate subclasses ensure that their respective clients' interests were protected and that currently diagnosed players were not favored over retired players without a diagnosis who may not develop diagnosable injuries (if ever) until years in the future (or vice versa).

4. There Are No Other "Obvious Deficiencies" To Doubt the Proposed Settlement's Fairness

As explained above, the complexity, expense, uncertainty, and likely duration of the litigation militate in favor of completing the settlement process. The Settlement defines a clearly identifiable and ascertainable Settlement Class, contains the material economic terms of the agreement, the manner and form of notice to be given to the Settlement Class, the contingencies or conditions to the Settlement's final approval, and other relevant terms. Moreover, the NFL Parties have agreed not to object to the mediator's proposal of a maximum attorneys' fee and reasonably incurred costs award of \$112.5 million *in addition to* the \$760 million that will fund the BAP Fund, Monetary Award Fund and Education Fund, up to \$4 million for Class Notice and one-half of the compensation for the Special Master. *See NEWBERG ON CLASS ACTIONS* § 14:6 (indicating that attorneys' fees of between 22% and 33% is normal for common fund cases); *Tenuto*, 2001 U.S. Dist. LEXIS 17694 at *4 (preliminarily approving class action settlement where attorneys' fees were 30% of the fund); *In re Smithkline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 533 (E.D. Pa. 1990) (noting that the general range of attorneys' fees in common fund cases is 19% to 45%). The payment by the NFL Parties of attorneys' fees in addition to the Settlement Fund is a significant benefit to Settlement Class Members. The Court retains the final authority to determine the ultimate attorneys' fee and cost award.

B. The Settlement Class and Subclasses Should Be Conditionally Certified for Settlement Purposes

Class actions certified in conjunction with settlements are well recognized. *See, e.g., Sullivan*, 667 F.3d at 311; *Processed Egg*, 284 F.R.D. at 253-54. The Court must consider whether the settlement class proposed is appropriate under FED. R. CIV. P. 23. *See Amchem*, 521 U.S. at 620; *Rodriguez v. City National Bank*, 726 F.3d 372, 380 (3d Cir. 2013); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527 (3d Cir. 2004); *Sullivan*, 667 F.3d at 296; *Processed Egg*, 284 F.R.D. at 253-54. The *Manual for Complex Litigation (Fourth)* advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).” MCL 4th, § 21.632.

Under Rule 23, Plaintiffs must demonstrate that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defense of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. The court is to apply a “rigorous analysis” to insure that each of the requirements of Rule 23 are met. *See Sullivan*, 667 F.3d at 306. However, when a court is “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620; *see also Sullivan*, 667 F.3d at 322 n.56 (same). Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” FED. R. CIV. P. 23(b)(3). Under the

rigorous analysis standard, the Settlement easily meets each of the requirements of Rule 23(a) and Rule 23(b)(3) for the proposed Settlement Class and Subclasses.

1. The Settlement Class and Subclasses Meet the Requirements Under Rule 23(a)

a) Numerosity

Rule 23(a)(1) requires that a class be “so numerous that their joinder before the Court would be impracticable.” *In re Blood Reagents Antitrust Litig.*, 283 F.R.D. 222, 232 (E.D. Pa. 2012). In these MDL proceedings, thousands of Retired NFL Football Players have filed suit against the NFL Parties alleging entitlement to damages for injuries sustained as a result of traumatic head impacts, including concussions, received during their NFL Football careers, and/or medical assessments to determine whether they have suffered any cognitive impairment. There are over 20,000 Settlement Class Members, including Retired NFL Football Players, Representative Claimants, and Derivative Claimants based upon the records of the NFL Parties. The numerosity requirement of Rule 23(a) is, therefore, easily met here. *See Stewart v. Abraham*, 275 F.3d 220, 227-28 (3d Cir. 2001) (noting that there is no minimum number to satisfy numerosity and observing that generally requirement is met if potential number of plaintiffs exceeds 40).

b) Commonality

FED. R. CIV. P. 23(a)(2) requires a showing of the existence of “questions of law or fact common to the class.” “A finding of commonality does not require that all class members share identical claims.” *In re Warfarin*, 391 F.3d at 530 (citation and internal quotation marks omitted). Indeed, the commonality element requires only that plaintiffs “share at least one question of fact or law with the grievances of the prospective class.” *Id.* at 527-28 (citations omitted).

Applying these principles, it is evident that the commonality requirement of Rule 23(a)(2) is easily met here. Questions surrounding the dangers of playing NFL Football, the effect concussions can have on cognitive impairment, and the knowledge of the NFL Parties as to the health risks presented by football-related concussions are issues common to Plaintiffs and the other members of the Settlement Class, thereby satisfying Rule 23(a)(2)'s commonality requirement. *See In re School Asbestos Litig.*, 789 F.2d 996, 1009 (3d Cir.), *cert. denied*, 479 U.S. 852 (1986) (affirming commonality based upon common factual issues such as "the health hazards of asbestos, the defendants' knowledge of those dangers, the failure to warn or test, and the defendants' concert of action or conspiracy in the formation of and adherence to industry practices. The court also believed that the proof of these matters would not vary widely from one class member to another"). *Compare Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541 (U.S. 2011) *and Rodriguez, supra* (plaintiffs were unable to establish a single common question).

c) Typicality

FED. R. CIV. P. 23(a)(3) requires that the class representatives' claims be "typical of the claims . . . of the class." As the Third Circuit explained:

The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented.

Baby Neal v. Casey, 43 F.3d 48, 57-58 (3d Cir. 1994); *see also In re Warfarin*, 391 F.3d at 532 (finding typicality prong met where "claims of representative plaintiffs arise from the same alleged wrongful conduct"); *In re Blood Reagents*, 283 F.R.D. at 233 ("If a plaintiff's claim arises from the same event, practice or course of conduct that gives rises to the claims of the class members, factual differences will not render that claim atypical if it is based on the same

legal theory as the claims of the class.”) (citation and quotation marks omitted). “The typicality criterion focuses on whether there exists a relationship between the plaintiff’s claims and the claims alleged on behalf of the class.” NEWBERG ON CLASS ACTIONS§ 3:13.

Plaintiff Class Representatives meet the typicality prong. Shawn Wooden is a Retired NFL Football Player who has not been diagnosed with a Qualifying Diagnosis and is a representative of Subclass 1. He has sued the NFL Parties seeking medical monitoring in the form of baseline assessment screening to determine whether he has any neurocognitive impairment owing to his years of playing NFL Football. If he is diagnosed with a Qualifying Diagnosis in the future, he will seek a Monetary Award.

Kevin Turner is a Retired NFL Football Player who has been diagnosed with ALS. He played eight seasons in the NFL. He is a representative of Subclass 2 and seeks compensation from the NFL Parties for his injuries.

Both of the Subclass Representatives seek to hold the NFL Parties liable for damages resulting from the NFL Parties’ alleged failure to warn and concealment of the dangers of NFL Football. Their claims are typical of the other Settlement Class Members in their respective Subclasses.

d) Adequacy of Representation

FED. R. CIV. P. 23(a)(4) requires representative parties to “fairly and adequately protect the interests of the class.” This requirement “seeks to uncover conflicts of interest between the named parties and the class they seek to represent.” *In re Warfarin*, 391 F.3d at 532. This requirement is satisfied here, as the named Plaintiffs vigorously have pursued the claims of the Settlement Class and the Subclass they purport to represent, and there is no disabling intra-class conflict.

The named Plaintiffs' interests are aligned with those of the Settlement Class and their respective Subclasses. Plaintiffs have filed the Class Action Complaint to seek baseline assessment examinations and compensation for their neurocognitive injuries and damages. These claims are co-extensive with those of the absent Settlement Class Members. All Settlement Class Members, like Plaintiffs, share an interest in obtaining redress from the NFL Parties for their alleged negligence and fraud. And all Settlement Class Members who are Retired NFL Football Players, like many Plaintiffs, have suffered repetitive blows to the head as NFL Football players, and have alleged a heightened risk of developing severe neurocognitive impairments as a result of those repetitive blows. Thus, the interests of all Settlement Class Members – including those with a present Qualifying Diagnosis and those at risk of developing significant neurocognitive impairment in the future – have been accounted for through the Settlement's BAP Fund and Monetary Award Fund.

Additionally, all eligible Settlement Class Members who timely and properly register under the Settlement Agreement may participate in the BAP and, if applicable, seek Monetary Awards or Derivative Claimant Awards. The award amount paid to any one Settlement Class Member has no bearing on the amount payable to any other (except between Derivative Claimants if there are more than one asserting a valid claim based on the same Retired NFL Football Player). That the Monetary Award Grid, at Exhibit 3 to the Settlement Agreement, provides for different levels of compensation for different impairments “is simply a reflection of the extent of the injury that certain class members incurred and does not clearly suggest that class members ha[ve] antagonistic interests.” *In re Insurance Brokerage Antitrust Litig.*, 579 F.3d 241, 272 (3d Cir. 2009); *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146 (8th Cir. 1999) (“[A]lmost every settlement will involve different awards for various class members.”); *In*

re Serzone Prods. Liab. Litig., 231 F.R.D. 221, 239 (S.D. W.Va. 2005) (“By nature of the settlement, the parties have negotiated values to assign to claims based on the severity of physical injury. [The Court] do[es] not consider the assignment of a lower value to claims where injuries are less serious to be evidence of conflict.”).

Moreover, unlike the failed settlements in *Amchem*, 521 U.S. 591, and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), the proposed Settlement here provides “structural assurance of fair and adequate representation for the diverse groups and individuals affected.” *Amchem*, 521 U.S. at 627. By dividing the Settlement Class into two Subclasses and providing each Subclass with its own counsel, the Settlement has cured any antagonism that may exist between the interests of those Settlement Class Members who have already been diagnosed with a Qualifying Diagnosis (Subclass 2) and those who have not (Subclass 1). *See In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, (N.D. Ohio 2001) (holding that subclasses cured potential intra-class conflict); *cf. Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 189-90 (3d Cir. 2012) (holding that dividing class into subclasses on remand would satisfy adequacy requirement).¹⁶

Also, the Settlement further protects the interests of those who may develop severe neurocognitive impairments in the future by: (i) indexing the Monetary Awards for inflation; (ii) providing that the Parties and the Special Master (or the Claims Administrator after expiration of

¹⁶ In *Saltzman v. Pella Corp.*, 257 F.R.D. 471 (N.D. Ill. 2009), for example, window buyers brought a class action against the manufacturer, alleging fraudulent concealment of an inherent product defect. The defendants argued that adequacy of representation was not satisfied, in part, because “the interests of the latent and manifest defect groups are not aligned in that individuals with manifest defects will want immediate payments, and those with latent defects will want a go-to fund for future use.” *Id.* at 480. The court found that *Amchem* was not controlling, noting that there the ““named parties with diverse medical conditions sought to act on behalf of a single giant class rather than on behalf of discrete subclasses.”” *Id.* at 483. The court found that, in contrast to *Amchem*, the plaintiffs in *Saltzman* had “proposed discrete subclasses designed around the type of injury to the class member. Named Plaintiffs are alleging a mixture of latently defective and manifestly defective windows (both replaced and not yet replaced), so they will adequately be able to represent all of the certified subclasses.” *Id.*

the term of the Special Master and any extension(s) thereof) may agree at some point that the Settlement Amount is insufficient to pay all approved claims from the Monetary Award Fund, which, upon Court approval, will trigger an additional contribution by the NFL Parties to the Monetary Award Fund in an amount not to exceed \$37.5 million; and (iii) providing eligible Settlement Class Members with Supplemental Monetary Awards, if and when they are diagnosed with additional Qualifying Diagnoses. *See In re Diet Drugs*, No. 1203, 99-20593, 2000 WL 1222042, *49 (E.D. Pa. Aug. 28, 2000) (holding that “step-up” provision and inflation indexing provided adequate structural protections), *aff’d without opinion*, 275 F.3d 34 (3d Cir. 2001); *see also In re Diet Drugs Liab. Litig.*, 431 F.3d 141, 147 (3d Cir. 2005) (“The District Court specifically found that this Settlement Agreement includes structural protections to protect class members with varying diagnoses, pointing to the ability of a particular class member to ‘step up’ to higher compensation levels as their disease progresses.”).

In addition, since all Settlement Class Members who are Retired NFL Football Players, are aware, of course, that they suffered impacts to the head while playing NFL Football, and the identities of approximately 18,000 Settlement Class Members are already known, Class Members are readily ascertainable, can be notified effectively, and can make an informed decision about whether to opt out of the Settlement Class. Consequently, they stand in sharp contrast to the conflicting, amorphous, and sprawling classes in *Amchem* and *Ortiz*, who numbered in the tens of millions, could not be identified in advance, and might well have been unaware that materials in their homes or workplaces contained the asbestos at issue in those actions. *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 269 (2d Cir. 2006) (distinguishing *Amchem* on the grounds that “all members of the [class at issue] have been identified, have been given notice of the settlement, and have had the opportunity to voice objections or to opt out

entirely"); *Diet Drugs*, 2000 WL 1222042 at *46 (holding that there was no *Amchem* "futures" problem because "all class members are aware of their exposure to [the subject drugs]").

Indeed, unlike *Amchem*, where the settlement class included members who were exposed to different asbestos-containing products, for different amounts of time, in different ways, and over different periods, and who may not even have been aware they were exposed, and some who suffered no physical injury or had only asymptomatic pleural changes, and did not have lung cancer or asbestosis or mesothelioma, the proposed Settlement Class here has a great deal of cohesion as all Retired NFL Football Players and their families are aware they played NFL Football. The Plaintiffs and Settlement Class Members all allege that their injuries arise from one cause (head impact while playing football), involving two defendants (the NFL and NFL Properties), over a defined period of time, and render them at increased risk of suffering only certain, particular types of injuries. And, all Settlement Class Members raise the same claims within their respective Subclasses. Thus, unlike in *Amchem*, the named Class Representatives' interests here are closely aligned with those of the Settlement Class, such that fair and adequate representation can be ensured and sufficient unity exists for settlement class certification purposes. *Compare Amchem*, 521 U.S. at 626.¹⁷

¹⁷ The facts underlying the proposed Settlement are analogous to those of other cases in which courts have held that settlements complied with the adequacy concerns of *Amchem*. For example, in *In re Countrywide Financial Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352 (W.D. Ky. Dec. 22, 2009), mortgage customers brought a nationwide class action alleging consumer law violations based on Countrywide's failure to secure their personal financial information, which resulted in a theft of that information from a database by a Countrywide employee. In challenging the proposed settlement, some of the objectors argued that there was an inherent conflict of interest between presently injured plaintiffs (*i.e.*, plaintiffs who had been victims of identity theft) with uninjured plaintiffs or "future" plaintiffs, and that these future plaintiffs were not adequately represented in the settlement negotiations. *Id.* at *4. The objectors argued that, like in *Amchem*, the settlement would bind persons who may experience future identity theft, and that the interests of these future plaintiffs were, therefore, not adequately represented. *Id.* The court disagreed, noting that the "representative Class Members ... possess the same interests as all other members of the class. *All class members have been subjected to the same alleged conduct by Countrywide* whereby private information was compromised, and the impact of this conduct has already or possibly will produce a similar result for all members. The Court does not shy away from the fact that, at present, not all class members have suffered the same injury. But unlike an asbestos mass tort action *where unknown plaintiffs may*

2. Common Questions of Law and Fact Predominate and the Superiority Requirement Is Met

In order to satisfy Rule 23(b)(3)'s requirement that common questions of law and fact predominate, "the predominance test asks whether a class suit for the unitary adjudication of common issues is economical and efficient in the context of all the issues in the suit." NEWBERG ON CLASS ACTIONS § 4:25; *see also Amchem*, 521 U.S. at 623 ("The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.") (citing 7A Wright, Miller, & Kane 518-19); *In re Warfarin*, 391 F.3d at 527-28; *Sullivan*, 667 F.3d at 297.

Plaintiffs contend that the issues surrounding the NFL Parties' alleged liability for the injuries suffered by Settlement Class Members predominate over any individual issues involving the Plaintiffs. These predominating common questions of fact easily comport with *Dukes, supra*. Moreover, a class settlement will ensure that all available funds are allocated equitably among those with claims against the NFL Parties. In this case, the class action vehicle is best suited for the resolution of Plaintiffs' and the other Settlement Class Members' claims. Plaintiffs' claims for compensatory relief and medical monitoring are founded upon a common legal theory related to the singular body of facts concerning the NFL Parties' knowledge and alleged concealment of the dangers that concussions in football pose to NFL Football players. A class settlement will insure that a fully developed, well-designed claims process exists to compensate Plaintiffs and other Settlement Class Members for their damages.

In addition to the predominance requirement, Rule 23(b)(3) requires that the class action device be superior to other methods of adjudication. Factors the court may consider include:

develop symptoms decades later, this action involves an objectively identifiable class. Class members who are fearful of the possibility of future identity theft will have been given notice of the settlement and have the opportunity to opt out." *Id.* at *5 (emphasis added).

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the difficulties likely to be encountered in the management of a class action.¹⁸

FED. R. CIV. P. 23(b)(3)(A)-(D).

Courts have recognized the benefits of “concentrating the litigation of claims in a single superior forum,” rather than requiring “numerous individual suits brought by claimants.” *Sullivan*, 667 F.3d at 311-12; *see also Amalgamated Workers Union of Virgin Islands v. Hess Oil Virgin Islands Corp.*, 478 F.2d 540, 543 (3d Cir. 1973) (“The ‘superiority requirement’ was intended to refer to the preferability of adjudicating claims of multiple-parties in one judicial proceeding and in one forum, rather than forcing each plaintiff to proceed by separate suit, and possibly requiring a defendant to answer suits growing out of one incident in geographically separated courts.”).

Moreover, in light of the JPML’s Order transferring these cases and consolidating them before this Court pursuant to 28 U.S.C. § 1407, “[t]his factor should . . . be of little or no significance in resolving the superiority issue.” NEWBERG ON CLASS ACTIONS, § 4:31. The JPML previously considered, pursuant to 28 U.S.C. § 1407, the desirability of centralizing the various concussion injury suits against the NFL Parties in this particular forum.

¹⁸ As stated earlier, any difficulties of management of this Settlement Class need not be considered when the Court is confronted with a request for settlement-only class certification because the proposal is that there be no trial. *See Amchem*, 521 U.S. at 620; *Sullivan*, 667 F.3d at 322 n.56.

In this case, Plaintiffs contend that it makes good sense to resolve promptly the claims against the NFL Parties in this forum through the class action device. Given the thousands of suits already commenced against the NFL Parties in federal and state courts, approval of the Settlement and resolution of all concussion injury claims against the NFL Parties in this forum benefits all Parties. Further, a class action suit is superior to any other form of adjudication because it provides the best way of managing and resolving the claims at issue here. “The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.” *In re Warfarin*, 391 F.3d at 533-34 (citation and quotation marks omitted).

Consideration of judicial economy and prompt resolution of claims underscore the superiority of the class action in this case. Should each of the cases filed by Plaintiffs against the NFL Parties be litigated individually, the Parties could face decades of litigation and significant expense in many different state and federal courts throughout the country, potentially resulting in conflicting rulings. In addition, compensation resulting from litigation is highly uncertain, especially given the preemption issue at stake in this case, and may not be received, in any event, before lengthy and costly trial and appellate proceedings are complete. Moreover, the Settlement removes the overwhelming and redundant costs of individual trials. See *Sullivan*, 667 F.3d at 310-12.

In sum, the requirements of Rule 23 are readily satisfied at this preliminary stage and certification of the Settlement Class and Subclasses is appropriate.

C. Plaintiffs Faced Significant Challenges and Obstacles in the Litigation

Plaintiffs faced stiff and complex challenges in the litigation. See Phillips Decl. at ¶12. Their claims could have been dismissed in their entirety or drastically reduced on the basis of the

NFL Parties' threshold legal arguments and defenses. Whether Plaintiffs could have maintained their claims and met their burden of proof when faced with a number of the arguments summarized below was a significant consideration in agreeing to the proposed Settlement Agreement.

1. Preemption

Plaintiffs' claims were at risk due to the NFL Parties' threshold legal argument that federal labor law precludes the litigation of Plaintiffs' claims in court. *See Phillips Decl.* at ¶13. In particular, in the Motions to Dismiss the Master Administrative Class Action Complaint and the Amended Master Administrative Long-Form Complaint on Preemption Grounds, the NFL Parties claimed that Section 301 of the Labor Management Relations Act ("LMRA") mandates the preemption of all state-law claims—whether based in negligence or fraud—whose resolution is substantially dependent upon or inextricably intertwined with the terms of a Collective Bargaining Agreement ("CBA"), or that arise under the CBA. *See* 29 U.S.C. §185(a) (codifying Section 301(a)); *see also Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985). Citing decisions from courts around the country, the NFL Parties contended that resolution of Plaintiffs' claims would substantially depend upon interpretations of the terms of the CBAs and that Plaintiffs' claims arose under the CBA. *See, e.g., Duerson v. National Football League*, No. 12-C-2513, 2012 WL 1658353 (N.D. Ill. May 11, 2012); *Maxwell v. National Football League*, Civ. No. 11-08394, Order (C.D. Cal. Dec. 8, 2011); *see also Stringer v. National Football League*, 474 F. Supp.2d 894 (S.D. Ohio 2007). Each of these decisions found that the NFL players' claims against the NFL or its Member Clubs relating to duties that are imposed by the CBAs were preempted because they required interpretation of CBA terms.

In support of this argument, the NFL Parties cited various CBA provisions relating to the Member Clubs' duties to provide medical care to NFL players during their playing careers. *See, e.g.*, Art. XLIV §1 (1993 CBA); Art. XLIV §1 (2006 CBA) (club physicians' duty to warn players about injuries "aggravated by continued performance"). The NFL Parties further highlighted other CBA provisions addressing rule-making, player safety rule provisions, grievance procedures, player benefits, as well as provisions of the NFL Constitution. The volume of CBA provisions and favorable court decisions on the preemption issue support the NFL Parties' argument that the degree of care owed to retired NFL Football players must be considered in light of the pre-existing contractual duties imposed by the CBAs. The same arguments apply to Plaintiffs' claims of fraudulent concealment and negligent misrepresentation.

The Plaintiffs offered well-reasoned arguments to oppose the NFL Parties' preemption defense. In particular, Plaintiffs asserted that controlling authority in the Third Circuit, *Kline v. Security Guards, Inc.*, 386 F.3d 246 (3d Cir. 2004), requires the presence of a concrete interpretive dispute over a specific CBA provision. Without an actual interpretive dispute of a specific term, there is no § 301 preemption, even if a CBA provision may be tangentially relevant as a factual matter. Despite the NFL Parties' reference to myriad CBA provisions, the Plaintiffs contended that none of the provisions gave rise to an *actual* dispute over the *interpretation* of any provision, and that the NFL Parties' arguments were theoretical at best.

Plaintiffs asserted factual arguments to distinguish their claims as well. For example, certain of the Retired NFL Football players played their entire NFL careers during periods of time when no CBA was in effect (meaning there could be no preemption defense against these players). As to those Retired NFL Football Players for which a CBA was in effect during their NFL careers, the question of whether their claims turn on the interpretation of a CBA provision

was disputed by Plaintiffs. For example, the NFL was not a signatory to a vast majority of the CBAs supposedly at issue.

As to Plaintiffs' fraudulent concealment and negligent misrepresentation claims, Plaintiffs powerfully asserted that the Third Circuit squarely held that where a plaintiff alleges fraud stemming from statements issued outside of the CBA bargaining process, the "elements of state law fraud" do "not depend on the [CBA]." *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 232 (3d Cir. 1995). Plaintiffs thus argued that their fraud claims turned on whether the NFL Parties had spoken about concussions truthfully, and on how those statements affected the decisions of the players. Since neither question demanded an investigation into the terms of the CBAs, Plaintiffs argued that the preemption defense could be defeated.

Thus, the legal issue of Section 301 LMRA preemption presented a significant challenge for both sides. The NFL Parties had strong arguments, legal authority, and facts. Plaintiffs, in turn, presented a forceful response. After extensive briefing on the matter, the Court heard oral argument on April 9, 2013, taking the matter under advisement. Had the Court accepted the NFL Parties' arguments, the Plaintiffs' claims could have been dismissed outright, rendered impracticable, or severely jeopardized or impaired.

2. Causation

Here, the Retired NFL Football Players brought suit for injuries allegedly resulting from head trauma they suffered during their NFL careers. Plaintiffs allege that had the NFL Parties properly treated these head traumas and, had they provided Plaintiffs with information they possessed concerning the risk of concussion, these players would not have suffered such debilitating injuries or the injuries could have been minimized. In deciding whether to resolve the Plaintiffs' claims outside of litigation, Co-Lead Class Counsel, Class Counsel and

Subclass Counsel took into consideration the significant legal impediments surrounding the Plaintiffs' ability to prove causation and obtain verdicts in the absence of a settlement. Specifically, but for the proposed Settlement, Plaintiffs would have had to demonstrate that the actions of the NFL Parties, in allegedly concealing risks of concussion and exposing them to head traumas on numerous occasions, was the legal cause of their injuries. Plaintiffs anticipate that the NFL Parties would have argued that Plaintiffs could not meet their burden because it was also possible that the injuries resulted from some other cause unrelated to football, or from head impacts suffered playing football in middle school, high school and/or college.

3. Statutes of Limitation

In the NFL Parties' motions to dismiss on preemption grounds, discussed above, the NFL Parties reserved the right to assert statute of limitations defenses in future motions to dismiss. “Challenges based on the statute of limitations . . . have usually been rejected and will not bar predominance satisfaction because those issues go to the right of a class member to recover, in contrast to underlying common issues of the defendant’s liability.”” *In re Linerboard Antitrust Litig.*, 305 F.3d 145, 163 (3d Cir. 2002) (quoting NEWBERG ON CLASS ACTIONS § 4.26 (3d ed.)). Nevertheless, a significant potential risk for Plaintiffs and Settlement Class Members moving forward with this litigation is that the NFL Parties could invoke a statute of limitations defense. See Phillips Decl. at ¶15. Many of the Retired NFL Football Players have not played for years, or even decades. Certain Settlement Class Members’ brain injuries and symptoms have been present for several years or even decades. This scenario presents a serious challenge as the NFL Parties could argue that as a result of the timing of certain Plaintiffs’ injuries, their claims are outside the applicable statute of limitations.

In cases where the causal connection between a plaintiff's injury and another's conduct is not apparent, many states have adopted a "discovery rule" that delays the accrual of a plaintiff's claim until the plaintiff discovers or reasonably should have discovered that they suffered an injury and that the injury was caused by the defendant. *See, e.g., Pedersen v. Zielski*, 822 P.2d 903, 906 (Alaska 1991) (stating that statute does not begin to run under discovery rule until claimant discovers, or reasonably should have discovered, existence of elements essential to his cause of action); *Anson v. Am. Motors Corp.*, 747 P.2d 581, 584 (Ariz. Ct. App. 1987) (recognizing that cause of action does not accrue until plaintiff discovers or should have discovered that he had been injured by defendant's conduct).¹⁹

However, several states have declined to adopt a "discovery rule," holding that a plaintiff's claim accrues upon the date of the injury. *See, e.g., Utilities Bd. of Opp v. Shuler Bros., Inc.*, No. 1111558, 2013 WL 3154011, at *4 (Ala. June 21, 2013) (stating that there is no discovery rule for negligence claims); *Chalmers v. Toyota Motor Sales*, 935 S.W.2d 258, 261 (Ark. 1996) (stating that there is no discovery rule for personal injury cases); *Johnston v. Dow & Coulombe, Inc.*, 686 A.2d 1064, 1066 (Me. 1996) (discovery rule is limited to claims for legal malpractice, medical malpractice, and asbestosis).²⁰

¹⁹ See, e.g., *Fox v. Ethicon Endo-Surgery, Inc.*, 110 P.3d 914, 920 (Cal. 2005) (stating that discovery rule postpones accrual of cause of action until plaintiff discovers, or has reason to discover, cause of action); CONN. GEN. STAT. § 52-584 (statute of limitations begins to run from date when injury is first sustained or discovered or in exercise of reasonable care should have been discovered); IDAHO CODE ANN. § 5-219(4) (when fact of damage has been fraudulently and knowingly concealed, a cause of action accrues when injured party knows or in exercise of reasonable care should have been put on inquiry of condition); *Bowen v. Eli Lilly & Co., Inc.*, 557 N.E.2d 739, 741 (Mass. 1990) (stating that under discovery rule, cause of action accrues when event or events have occurred that were reasonably likely to put plaintiff on notice that someone may have caused his injury).

²⁰ See also *Herrmann v. McMenomy v. Severson*, 590 N.W.2d 641, 643 (Minn. 1999) (statute of limitations is not tolled by ignorance of cause of action); *Carr v. Anding*, 793 S.W.2d 148, 150 (Mo. Ct. App. 1990) (recognizing that Missouri has rejected discovery rule and statute of limitations runs when fact of damage is capable of ascertainment, although not actually discovered); *Dreyer-Lefevre v. Morissette*, No. 56653, 2011 WL 2623955, at *2 (Nev. July 1, 2011) (discovery rule does not apply to cause of action for injuries to person caused by wrongful act or neglect of

As noted above, many of the players have been retired from NFL Football for many years or even decades. Therefore, the repetitive, traumatic sub-concussive and/or concussive head impacts which occurred while participating in games and practice happened a long time ago. Thus, in states that have not adopted a discovery rule, the NFL Parties could argue that each player's cause of action accrued at the time of the initial impact that caused the players to suffer a traumatic brain injury. Accordingly, Plaintiffs' claims would likely be subject to the defense that each player who suffered his initial head impact outside the applicable statute of limitations does not have timely claims and should be dismissed.

Further, in each of the states that has adopted a discovery rule, the NFL Parties could argue that Plaintiffs' causes of action are untimely when applying the applicable discovery rule. The NFL Parties could assert that certain Plaintiffs have been aware of their injuries for years and believed that NFL Football caused their injuries. Moreover, the NFL Parties may argue that the public records put Plaintiffs on notice of their potential claims years ago, such that certain Plaintiffs failed to file their claims in a timely manner.

Based on the foregoing, the statute of limitations defenses available to the NFL Parties pose a significant risk to the claims of many of the Plaintiffs and Settlement Class Members. This proposed Settlement appropriately factors in, and avoids, the significant risks presented by the NFL Parties' statute of limitation defenses.

another); N.Y.C.P.L.R. § 2-14 (discovery rule is limited to toxic tort and foreign object causes of action); *Koenig v. Lambert*, 527 N.W.2d 903, 905 (S.D. 1995) (recognizing that legislature has acknowledged and rejected discovery rule), *overruled on other grounds*, 567 N.W.2d 220 (S.D. 1997); VA. CODE ANN. § 8.01-230 ("the right of action shall be deemed to accrue and the prescribed limitation period shall begin from the date the injury is sustained in the case of injury to the person").

4. Assumption of Risk

As the NFL has done in other litigation, the NFL Parties are expected to raise the defense that Plaintiffs had assumed the risks of the cognitive injuries they developed. *See Phillips Decl.* at ¶15. It is well known that football poses serious injury risks as countless individuals (at all levels of the sport) incur personal injuries every year while playing the sport. It is also well known that countless individuals suffer serious head trauma, including concussions, while playing football. Therefore, it would not be unexpected that the NFL Parties would present a strong assumption of risk argument in opposing the Plaintiffs' claims.

Under the doctrine of assumption of risk, one who voluntarily participates in an activity, such as tackle football, consents to those commonly appreciated risks that are inherent in and arise out of the nature of the activity generally and flow from such participation. *See Alqurashi v. Party of Four, Inc.*, 89 A.D.3d 1047, 1047 (N.Y. App. Div. 2d Dept. 2011) (“The doctrine of primary assumption of risk provides that a voluntary participant in a sporting or recreational activity consents to those commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation”) (citations and internal quotations omitted).²¹

Therefore, in light of the great risk of physical injury that is inherent in football, the doctrine of assumption of risk poses a significant challenge to Plaintiffs' claims going forward.

²¹ See also *Savino v. Robertson*, 652 N.E.2d 1240, 1244 (Ill. App. 1995) (enactment of Illinois' modified comparative fault statute has no effect on express assumption of risk, where plaintiff expressly assumes dangers and risks created by activity or defendant's negligence, or on primary implied assumption of risk, where plaintiff knowingly and voluntarily assumes risks inherent in particular situation or defendant's negligence); *Coomer v. Kansas City Royals Baseball Corp.*, Nos. WD 73984, WD 74040, 2013 WL 150838, at *3 (Mo. Ct. App. Jan. 15, 2013) (“Primary implied assumption of risk operates to negate the negligence element of duty . . . [t]he plaintiff's voluntary participation in the activity serves as consent to the known, inherent, risks of the activity and relieves the defendant of the duty to protect the plaintiff from those harms.”) (internal citations omitted); *Fortier v. Los Rios Cnty. Coll. Dist.*, 52 Cal. Rptr. 2d 812 (Cal. App. 4th 1996) (applying doctrine of assumption of risk to preclude football player's claims for personal injuries).

Indeed, the doctrine has been recognized or applied in numerous cases involving football players who were injured while playing the sport. *See, e.g., Brown v. National Football League*, 219 F. Supp. 2d 372, 389 (S.D.N.Y. 2002) (noting that state law claims by NFL player for injuries incurred while playing professional football” will “implicate . . . ordinary concepts of negligence and assumption of risk”); *Glazier v. Keuka Coll.*, 275 A.D.2d 1039 (N.Y. App. Div. 2000) (plaintiffs assumed risk of injuries, as matter of law, by engaging in tackle football game between two residence halls); *Hunt v. Skaneateles Cent. Sch. Dist.*, 227 A.D.2d 939 (N.Y. App. Div. 1996) (high school student assumed risk of football related injury); *Benitez v. New York City Bd. of Educ.*, 73 N.Y.2d 650 (1989) (same); *Fortier v. Los Rios Cnty. Coll. Dist.*, 52 Cal. Rptr. 2d 812 (Cal. App. 4th 1996) (doctrine of assumption of risk precluded collegiate football player from recovering from community college for personal injuries sustained during football practice); *cf. Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516, 520 (10th Cir. 1979) (noting that theory of negligence would not support holding NFL team liable, “since subjecting another to unreasonable risk of harm, the essence of negligence, is inherent in the game of football, for admittedly it is violent,” and drawing distinction that where football player is subject to intentional conduct that results in infliction of injuries in reckless disregard of his rights, only then may NFL team be liable for such intentional conduct, since it is “highly questionable whether a professional football player consents or submits to injuries caused by conduct not within the rules”).

Even in those states that do not recognize assumption of risk as a defense, such states will nevertheless consider concepts such as contributory negligence or comparative fault to limit any recovery by a plaintiff, where that plaintiff is deemed to have engaged in a dangerous activity

that contributed to his or her injuries.²² *See generally Brown*, 219 F. Supp. 2d at 384 n.5 (noting that “implied assumption of risk is no longer a complete defense, but is subsumed under New York’s comparative fault statute”); *see also Britenriker v. Mock*, No. 3:08 CV 1890, 2009 WL 2392917, at *5 (N.D. Ohio July 31, 2009) (same; applying Ohio law).

Therefore, based on the well-known risks of injury associated with football, to proceed with this litigation would expose Plaintiffs to significant risks and challenges based on the defenses of assumption of risk, contributory negligence, and comparative fault.

5. Other Defenses

The NFL Parties also may assert a statutory employer defense in this litigation. Pursuant to this defense, a general contractor (or other similarly situated employer) can be held immune from suit, with the applicable Workers Compensation Act providing the exclusive remedy to an injured employee of a subcontractor. *See Fulgham v. Daniels J. Keating Co.*, 285 F. Supp. 2d 525, 537 (D.N.J. 2003) (once employer qualifies as statutory employer under Pennsylvania Workers’ Compensation Act, it is immune from suit even if injured worker’s immediate

²² See, e.g., ARIZ. REV. STAT. ANN. § 12-2505 (contributory negligence is defense in Arizona); *Valley Elec., Inc. v. Doughty*, 528 P.2d 927, 928 (Colo. Ct. App. 1974) (contributory negligence is defense where plaintiff engaged in dangerous activity); *Allen v. Kamp’s Beauty Salon, Inc.*, 177 So. 2d 678, 679 (Fla. Dist. Ct. App. 1965) (contributory negligence is defense in Florida); *Garrett v. NationsBank, N.A. (S.)*, 491 S.E.2d 158 (Ga. App. 1997) (contributory negligence is defense in Georgia); *Funston v. Sch. Town of Munster*, 849 N.E.2d 595 (Ind. 2006) (contributory negligence is defense in Indiana); *Smith v. McGittigan*, 376 So. 2d 598 (La. Ct. App. 1979) (contributory negligence is defense in Louisiana); *Collins v. Nat'l R.R. Passenger Corp.*, 9 A.3d 56 (Md. 2010) (contributory negligence is defense in Maryland); MASS. GEN. LAWS ANN. ch. 231, § 85 (contributory negligence is defense in Massachusetts); MICH. COMP. LAWS ANN. § 600.2959 (comparative fault is defense in Michigan); MINN. STAT. ANN. § 604.01 (comparative fault is defense in Minnesota); *Stallings v. Food Lion, Inc.*, 539 S.E.2d 331 (N.C. App. 2000) (contributory negligence is defense under North Carolina law); OHIO REV. CODE § 2315.19(B)(4) (comparative fault is defense under Ohio law); 42 PA. CONS. STAT. ANN. § 7102 (comparative negligence is defense in Pennsylvania); *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992) (comparative fault is defense in Tennessee); TEX. CIV. PRAC. & REM. CODE ANN. § 33.001 (comparative fault is defense in Texas); WASH. REV. CODE ANN. § 4.22.005 (West) (contributory fault is defense in Washington).

employer provides benefits; statutory employer retains its common law immunity in exchange for its secondary liability under Workers' Compensation Act).

In Pennsylvania, to create the relation of statutory employer under section 203 of the act (77 PA. CONS. STAT. ANN. § 52), all of the following elements essential to a statutory employer's liability must be present: (1) an employer who is under contract with an owner or one in the position of an owner; (2) premises occupied by or under the control of such employer; (3) a subcontract made by such employer; (4) part of the employer's regular business is entrusted to such subcontractor; and (5) an employee of such subcontractor. *Rolick v. Collins Pine Co.*, 925 F.2d 661, 663 (3d Cir. 1991) (citing *McDonald v. Levinson Steel Co.*, 302 Pa. 287 (1930)); see also *Al-Ameen v. Atlantic Roofing Corp.*, 151 F. Supp. 2d 604, 606 (E.D. Pa. 2001) (citing *McDonald* test).

The statutory employer defense is widely recognized as precluding injured employees of subcontractors from recovering damages from general contractors.²³ In such cases, courts recognize that the injured employee's claims are in the nature of Workers' Compensation claims, and that both the subcontractor and general contractor should be immunized from common law liability.

Thus, one may expect the NFL Parties to pursue the statutory employer defense in this case. The NFL Parties may argue it is similarly situated to a general contractor with respect to

²³ See, e.g., *Young v. Envtl. Air Products, Inc.*, 665 P.2d 40, 45-46 (Ariz. 1983) (Arizona recognizes the statutory employer defense); *Zamudio v. City & Cnty. of San Francisco*, 82 Cal. Rptr. 2d 664 (Cal. App. 1999) (California recognizes statutory employer defense); *Finlay v. Storage Tech. Corp.*, 764 P.2d 62 (Colo. 1988) (Colorado recognizes statutory employer defense); *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433 (Tex. 2009) (Texas recognizes statutory employer defense); *Roberts v. City of Alexandria*, 246 Va. 17, 19 (1993) (Virginia recognizes statutory employer defense); *Manor v. Nestle Food Co.*, 932 P.2d 628, 632 (Wash. 1997) amended, 945 P.2d 1119 (Wash. 1997) and disapproved of on other grounds by *Washington Indep. Tel. Ass'n v. Washington Utilities & Transp. Comm'n*, 64 P.3d 606 (Wash. 2003) (Washington recognizes statutory employer defense).

the injured players, and the injured players are akin to the employees of subcontractors. Therefore, if this litigation goes forward in the absence of a settlement agreement, the NFL Parties may argue that they are immune from suit as the statutory employer of the injured Retired NFL Football Players.

D. The Proposed Form and Method of Class Notice Satisfy Due Process

Under Rule 23(e)(1) of the Federal Rules of Civil Procedure, when approving a class action settlement, the district court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” FED. R. CIV. P. 23(e)(1). In addition, for classes certified under Rule 23(b)(3), courts must ensure that class members receive “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B); *see Amchem*, 521 U.S. at 617; *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 173 (1974).

Due process requires that notice be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 944 (10th Cir. 2005). Rule 23(c)(2)(B) provides that the “notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” FED. R. CIV. P. 23(c)(2)(B).

The form and content of the proposed Long-form notice (the “Notice”) and the short-form notice (“Summary Notice”) satisfy all these legal parameters. *See Exhibits 3 and 5 at Notice Plan, appended to the Kinsella Declaration (Exhibit C to this Motion).* Each form of notice is written in plain and straightforward language consistent with Rules 23(c)(2)(B) and 23(e)(1). The Notice objectively and neutrally apprises all Settlement Class Members of the nature of the action; the definition of the Settlement Class sought to be certified for purposes of the Settlement; the Settlement Class claims and issues; that Settlement Class Members may enter an appearance through an attorney before the Court at the Fairness Hearing (in accordance with the procedures set forth in the Notice); that the Court will exclude from the Settlement Class anyone who elects to opt out of the Settlement (and sets forth the procedures and deadlines for doing so); and the binding effect of a class judgment on Settlement Class Members under Rule 23(c)(3)(B). The Notice additionally discloses the date, time, and location of the Fairness Hearing, and the procedures and deadlines for the submission of objections to any aspect of the Settlement. These disclosures are complete and should be approved by the Court. *See In re Certainteed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 482-83 (E.D. Pa. 2010); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 175 (E.D. Pa. 2000).

To deliver the best notice practicable to Settlement Class Members, Co-Lead Class Counsel, together with their notice agent, Katherine Kinsella, President of Kinsella Media LLC, have developed a comprehensive and innovative Notice Plan that far exceeds the requirements of Rule 23 and due process. As described earlier, the notice plan supplements traditional methods of direct and publication notice with an ambitious outreach strategy designed to find missing Settlement Class Members who are Retired NFL Football Players. *See Kinsella Declaration,* ¶30. The direct notice will be accomplished by mailing the Long-form notice to each known

Settlement Class Member. The Settlement Class Members' addresses will be extracted from the following data sets: current Bert Bell/Pete Rozelle NFL Player Retirement Plan pension list; Retired NFL Football Player address data collected and used in the *Dryer* case; a list of NFL players active through 2010 compiled by STATS; a list of former World League of American Football, NFL Europe, and NFL Europa players; and a list of former AFL players. Unlike many class actions, this direct mailed notice will provide for actual individual notice to a great many Settlement Class Members.

Further, the Social Security Death Index will be used to identify additional deceased Retired NFL Football Players, the LexisNexis Relative Search will be used to find a nearest relative or last person to live with the deceased player, and the National Change of Address Database will be used to get the most recent addresses. In addition, publication notice will be accomplished through full-page color advertisements in consumer magazines, thirty-second radio and television advertisements, and internet advertisements. *See Kinsella Declaration, ¶¶19-23.* These direct notice and publication notice strategies, alone, satisfy the requirements of Rule 23 and due process. *See Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985) ("It is well settled that in the usual situation first-class mail and publication in the press fully satisfy the notice requirements of both FED. R. CIV. P. 23 and the due process clause."); *In re Certainteed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. at 482-83 (finding that direct mailing and advertisements on television and internet satisfied requirements of Rule 23 and due process); *Grunewald v. Kasperbauer*, 235 F.R.D. 599, 609 (E.D. Pa. 2006) (same for direct mailing and advertisements in three newspapers and internet); *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 210-11 (S.D.N.Y. 1995) (finding that notice by first class mail is the best notice practicable, and publication in a major newspaper "will have the

broadest reach to inform those members of the Class who, for some reason, may not receive the mailed Notice"); *Trist v. First Federal Savings & Loan Assoc. of Chester*, 89 F.R.D. 1, 2 (E.D. Pa. 1980) (notice that failed to reach one-eighth of class was sufficient). Similar levels of penetration have been deemed adequate under Rule 23 and the Due Process clause. *See In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1061 (S.D. Tex. 2012) (notice plan that expert estimated would reach 81.4% of class was sufficient); *Alberton v. Commonwealth Land Title Ins. Co.*, No. 06-3755, 2008 WL 1849774, at *3 (E.D. Pa. Apr. 25, 2008) (direct notice projected to reach 70% of class plus publication in newspapers and internet was sufficient); *Grunewald*, 235 F.R.D. at 609 (direct mail to 55% of class and publication in three newspapers and internet was sufficient); *In re Lupron Marketing and Sales Practices Litig.*, 228 F.R.D. 75, 96 (D. Mass. 2005) (notice plan that experts predicted would expose 80% of class to notice was sufficient).

Plaintiffs' Notice experts estimate that the Notice Plan, as a whole, will reach approximately 90% of the Settlement Class Members. *See Kinsella Declaration, ¶36*. Because the proposed notice plan easily fulfills the requirements of Rule 23 and the due process, it should be approved by the Court.

E. The Court Should Stay This Action and Enjoin Related Lawsuits By Settlement Class Members

Along with staying the instant litigation and all other Related Lawsuits against the NFL Parties (and other Released Parties) in this Court, the Court should enjoin all Settlement Class Members, unless and until they have been excluded from the Settlement Class by action of the Court, or until the Court denies approval of the Class Action Settlement (and such denial is affirmed by the Court of last resort), or until the Settlement Agreement is otherwise terminated,

from filing, commencing, prosecuting, continuing to prosecute, supporting, intervening in, or participating as plaintiffs, claimants, or class members in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances at issue, in the Class Action Complaint and/or the Released Claims. No such injunction would apply to the Riddell Defendants. Such “injunctive relief is commonly granted in preliminary approvals of class-action settlements pursuant to the All Writs Act and the Anti-Injunction Act.” *In re Uponor, Inc.*, No. 11-MD-2247, 2012 U.S. Dist. LEXIS 5339, 23-34 (D. Minn. Jan. 18, 2012); *see also In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 360-61 (3d Cir. 2001) (upholding order enjoining all class members from “filing, commencing, prosecuting, continuing, litigating, intervening in or participating as class members in, any lawsuit in any jurisdiction based on or related to the facts and circumstances underlying the claims and causes of action in this lawsuit, unless and until such [class member] has timely excluded herself or himself from the Class.”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1018, 1025 (9th Cir. 1997) (upholding preliminary class settlement approval order enjoining duplicative state actions).

The All Writs Act authorizes courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). While the Anti-Injunction Act limits a federal court’s powers under the All Writs Act, it expressly authorizes a federal court to enjoin parallel state court proceedings—including indirectly, by enjoining the parties to state court proceedings—“where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283; *see also In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 233 (3d Cir. 2002) (“An order directed at the parties and their representatives, but not at the court itself, does not remove it from the scope of the Anti-

Injunction Act.”). *See generally Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996); *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 202–04 (3d Cir. 1993); *Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir. 1989); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1334–35 (5th Cir. 1981).

Here, issuance of this injunction is necessary and appropriate in aid of the Court’s jurisdiction because, as recognized by the Third Circuit, “[t]he threat to the federal court’s jurisdiction posed by parallel state actions is particularly significant where there are conditional class certifications and impending settlements in federal action.” *Diet Drugs*, 282 F.3d at 236 (citations omitted)(“In complex cases where certification or settlement has received conditional approval … the challenges facing the overseeing court are such that it is likely that almost any parallel litigation in other fora presents a genuine threat to the jurisdiction of the federal court.”); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 314 F.3d 99, 104 (3d Cir. 2002) (“[D]istrict courts overseeing complex federal litigation are especially susceptible to disruption by related actions in state fora.”). Indeed, the “success of any federal settlement [is] dependent on the parties’ ability to agree to the release of any and all related civil claims[.]” *In re Baldwin-United Corp.*, 770 F.2d 328, 337 (2d Cir. 1985). Parallel state actions threaten this interest by undermining “the finality of any federal settlement.” *Id.*

That is precisely the case here. This is a complex, multi-district litigation involving nearly 300 consolidated actions and over 7,000 plaintiffs (and with the proposed class, involves thousands more), multiple rounds of motion practice, and oral argument. The Settling Parties have engaged in hard-fought, difficult negotiations and reached a comprehensive, global settlement. Yet the NFL Parties could remain exposed to “countless suits in state court despite settlement of the federal claims” that might “seriously undermine the possibility for settling any

large, multi-district class action” and throw into doubt the finality of the releases the NFL Parties bargained for, and the validity of the entire agreement. *See Prudential Ins.*, 314 F.3d at 104-105 (citations omitted). In addition, an injunction will permit Settlement Class Members to review the notice materials discussing the terms of the proposed nationwide settlement and to assess their rights and options without the distraction and confusion that would be occasioned by competing actions.

V. CONCLUSION

For the reasons set forth above, the Court should grant Plaintiffs’ motion.

Dated: January 6, 2014

Respectfully submitted,

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Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE:
PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

CIVIL ACTION NO: 14-29

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

CLASS ACTION SETTLEMENT AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>	
ARTICLE I	Definitions of Settlement Class and Subclasses	3
ARTICLE II	Definitions	4
ARTICLE III	Settlement Benefits for Class Members	15
ARTICLE IV	Information and Registration Process.....	16
ARTICLE V	Baseline Assessment Program.....	19
ARTICLE VI	Monetary Awards for Qualifying Diagnoses.....	29
ARTICLE VII	Derivative Claimant Awards	32
ARTICLE VIII	Submission and Review of Claim Packages and Derivative Claim Packages.....	33
ARTICLE IX	Notice of Claim Determinations, Payments, and Appeals	36
ARTICLE X	Class Action Settlement Administration	43
ARTICLE XI	Identification and Satisfaction of Liens.....	52
ARTICLE XII	Education Fund.....	57
ARTICLE XIII	Preliminary Approval and Class Certification.....	57
ARTICLE XIV	Notice, Opt Out, and Objections.....	59
ARTICLE XV	Communications to the Public.....	61
ARTICLE XVI	Termination.....	62
ARTICLE XVII	Treatment of Confidential Information	63
ARTICLE XVIII	Releases and Covenant Not to Sue	64
ARTICLE XIX	Bar Order	68
ARTICLE XX	Final Order and Judgment and Dismissal With Prejudice.....	69
ARTICLE XXI	Attorneys' Fees	70
ARTICLE XXII	Enforceability of Settlement Agreement and Dismissal of Claims	70

ARTICLE XXIII NFL Payment Obligations	71
ARTICLE XXIV Denial of Wrongdoing, No Admission of Liability	77
ARTICLE XXV Representations and Warranties	78
ARTICLE XXVI Cooperation.....	79
ARTICLE XXVII Continuing Jurisdiction.....	80
ARTICLE XXVIII Role of Co-Lead Class Counsel, Class Counsel and Subclass Counsel.....	80
ARTICLE XXIX Bargained-For Benefits.....	81
ARTICLE XXX Miscellaneous Provisions	81

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS'
CONCUSSION INJURY LITIGATION, MDL 2323,
CLASS ACTION SETTLEMENT AGREEMENT
(subject to Court approval)**

PREAMBLE

This SETTLEMENT AGREEMENT, dated as of January 6, 2014 (the “Settlement Date”), is made and entered into by and among defendants the National Football League (“NFL”) and NFL Properties LLC (“NFL Properties”) (collectively, “NFL Parties”), by and through their attorneys, and the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, by and through Co-Lead Class Counsel, Class Counsel and Subclass Counsel. This Settlement Agreement is intended by the Parties fully, finally, and forever to resolve, discharge, and settle all Released Claims against the Released Parties, as set forth below, subject to review and approval by the Court.¹

RECITALS

A. On January 31, 2012, a federal multidistrict litigation was established in the United States District Court for the Eastern District of Pennsylvania, In re: National Football League Players’ Concussion Injury Litigation, MDL No. 2323. Plaintiffs in MDL No. 2323 filed a Master Administrative Long-Form Complaint and a Master Administrative Class Action Complaint for Medical Monitoring on June 7, 2012. Plaintiffs filed an Amended Master Administrative Long-Form Complaint on July 17, 2012. Additional similar lawsuits are pending in various state and federal courts.

B. The lawsuits arise from the alleged effects of mild traumatic brain injury allegedly caused by the concussive and sub-concussive impacts experienced by former NFL Football players. Plaintiffs seek to hold the NFL Parties responsible for their alleged injuries under various theories of liability, including that the NFL Parties allegedly breached a duty to NFL Football players to warn and protect them from the long-term health problems associated with concussions and that the NFL Parties allegedly concealed and misrepresented the connection between concussions and long-term chronic brain injury.

C. On August 30, 2012, the NFL Parties filed motions to dismiss the Master Administrative Class Action Complaint for Medical Monitoring and the Amended Master Administrative Long-Form Complaint on preemption grounds. Plaintiffs filed their oppositions to the motions on October 31, 2012, the NFL Parties filed reply memoranda of law on December 17, 2012, and plaintiffs filed sur-reply memoranda of law on January 28, 2013. Oral argument on the NFL Parties’ motions to dismiss on preemption grounds was held on April 9, 2013.

¹ Capitalized terms have the meanings provided in ARTICLE II, unless a section or subsection of this Settlement Agreement provides otherwise.

D. On July 8, 2013, prior to ruling on the motions to dismiss, the Court ordered the plaintiffs and NFL Parties to engage in mediation to determine if consensual resolution was possible and appointed retired United States District Court Judge Layn Phillips of Irell & Manella LLP as mediator.

E. Over the course of the following two months, the Parties, by and through their respective counsel, engaged in settlement negotiations under the direction of Judge Phillips. On August 29, 2013, the Parties signed a settlement term sheet setting forth the material terms of a settlement agreement. On the same day, the Court issued an order deferring a ruling on the NFL Parties' motions to dismiss and ordering the Parties to submit, as soon as possible, the full documentation relating to the settlement, along with a motion seeking preliminary approval of the settlement and notice plan.

F. In conjunction with the filing of this Settlement Agreement, the Class and Subclass Representatives filed Plaintiffs' Class Action Complaint ("Class Action Complaint") on January 6, 2014. In the Class Action Complaint, the Class and Subclass Representatives allege claims for equitable, injunctive and declaratory relief pursuant to Federal Rules of Civil Procedure 23(a)(1-4) & (b)(2), or, alternatively, for compensatory damages pursuant to Federal Rule of Civil Procedure 23(b)(3), for negligence, negligent hiring, negligent retention, negligent misrepresentation, fraud, fraudulent concealment, medical monitoring, wrongful death and survival, and loss of consortium, all under state law.

G. The NFL Parties deny the Class and Subclass Representatives' allegations, and the allegations in Related Lawsuits, and deny any liability to the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member for any claims, causes of action, costs, expenses, attorneys' fees, or damages of any kind, and would assert a number of substantial legal and factual defenses against plaintiffs' claims if they were litigated to conclusion.

H. The Class and Subclass Representatives, through their counsel, have engaged in substantial fact gathering to evaluate the merits of their claims and the NFL Parties' defenses. In addition, the Class and Subclass Representatives have analyzed the legal issues raised by their claims and the NFL Parties' defenses, including, without limitation, the NFL Parties' motions to dismiss the Amended Master Administrative Long-Form Complaint and Master Administrative Class Action Complaint on preemption grounds.

I. After careful consideration, the Class and Subclass Representatives, and their respective Counsel, have concluded that it is in the best interests of the Class and Subclass Representatives and the Settlement Class and Subclasses to compromise and settle all Released Claims against the Released Parties for consideration reflected in the terms and benefits of this Settlement Agreement. After arm's length negotiations with Counsel for the NFL Parties, including through the efforts of the court-appointed mediator, the Class and Subclass Representatives have considered, among other things: (1) the complexity, expense, and likely duration of the litigation; (2) the stage of the litigation and amount of fact gathering completed; (3) the potential for the

NFL Parties to prevail on threshold issues and on the merits; and (4) the range of possible recovery, and have determined that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class and Subclass Representatives and the Settlement Class and Subclasses.

J. The NFL Parties have concluded, in light of the costs, risks, and burden of litigation, that this Settlement Agreement in this complex putative class action litigation is appropriate. The NFL Parties and Counsel for the NFL Parties agree with the Class and Subclass Representatives and their respective counsel that this Settlement Agreement is a fair, reasonable, and adequate resolution of the Released Claims. The NFL Parties reached this conclusion after considering the factual and legal issues relating to the litigation, the substantial benefits of this Settlement Agreement, the expense that would be necessary to defend claims by Settlement Class Members through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of the NFL Parties to conduct their business unhampered by the costs, distraction and risks of continued litigation over Released Claims.

K. The Parties desire to settle, compromise, and resolve fully all Released Claims.

L. The Parties desire and intend to seek Court review and approval of the Settlement Agreement, and, upon preliminary approval by the Court, the Parties intend to seek a Final Order and Judgment from the Court dismissing with prejudice the Class Action Complaint and ordering the dismissal with prejudice of Related Lawsuits.

M. This Settlement Agreement will not be construed as evidence of, or as an admission by, the NFL Parties of any liability or wrongdoing whatsoever or as an admission by the Class or Subclass Representatives, or Settlement Class Members, of any lack of merit in their claims.

NOW, THEREFORE, it is agreed that the foregoing recitals are hereby expressly incorporated into this Settlement Agreement and made a part hereof and further, that in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, including the Releases and Covenant Not to Sue in ARTICLE XVIII, the entry by the Court of the Final Order and Judgment dismissing the Class Action Complaint with prejudice and approving the terms and conditions of the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this action shall be settled and compromised under the following terms and conditions:

ARTICLE I **Definitions of Settlement Class and Subclasses**

Section 1.1 Definition of Settlement Class

(a) "Settlement Class" means all Retired NFL Football Players, Representative Claimants and Derivative Claimants.

(b) Excluded from the Settlement Class are any Retired NFL Football Players, Representative Claimants or Derivative Claimants who timely and properly exercise the right to be excluded from the Settlement Class (“Opt Outs”).

Section 1.2 Definition of Subclasses

(a) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

(b) “Subclass 2” means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

ARTICLE II Definitions

Section 2.1 Definitions

For the purposes of this Settlement Agreement, the following terms (designated by initial capitalization throughout this Agreement) will have the meanings set forth in this Section.

Unless the context requires otherwise, (i) words expressed in the masculine will include the feminine and neuter gender and vice versa; (ii) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (iii) the word “or” will not be exclusive; (iv) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (v) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Fed. R. Civ. P. 6(a)(6)), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (vi) references to this Settlement Agreement will include all exhibits, schedules, and annexes hereto; (vii) references to any law will include all rules and regulations promulgated thereunder; (viii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; and (ix) references to dollars or “\$” are to United States dollars.

(a) “Active List” means the list of all players physically present, eligible and under contract to play for a Member Club on a particular game day within any applicable roster or squad limits set forth in the applicable NFL or American Football League Constitution and Bylaws.

(b) “Additional Contingent Contribution” means the conditional monetary payment by the NFL Parties, as set forth in Section 23.5.

(c) “Affiliate” means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting shares, by contract, or otherwise.

(d) “ALS” means amyotrophic lateral sclerosis, also known as Lou Gehrig’s Disease, as defined in Exhibit 1.

(e) “Alzheimer’s Disease” is defined in Exhibit 1.

(f) “American Football League” means the former professional football league that merged with the NFL.

(g) “Appeals Form” means that document that Settlement Class Members, the NFL Parties or Co-Lead Class Counsel, as the case may be, will submit when appealing Monetary Award or Derivative Claimant Award determinations by the Claims Administrator, as set forth in Section 9.7.

(h) “Appeals Advisory Panel” means a panel of physicians, composed of, in any combination, three neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, board-certified neurologists and/or board-certified neurosurgeons, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, any one of whom is eligible to advise the Court or the Special Master with respect to medical aspects of the Class Action Settlement.

(i) “Baseline Assessment Program” (“BAP”) means the program described in ARTICLE V.

(j) “Baseline Assessment Program Supplemental Benefits” or “BAP Supplemental Benefits” means medical treatment, including, as needed, counseling and pharmaceutical coverage, for Level 1 Neurocognitive Impairment (as set forth in Exhibit 1) within a network of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s), respectively, established by the BAP Administrator, as set forth in Section 5.11.

(k) “Baseline Assessment Program Fund Administrator” or “BAP Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the BAP Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE V.

(l) "Baseline Assessment Program Fund" or "BAP Fund" means the fund to pay BAP costs and expenses, as set forth in ARTICLE V.

(m) "Claim Form" means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant claiming a Monetary Award, as set forth in ARTICLE VIII.

(n) "Claim Package" means the Claim Form and other documentation, as set forth in Section 8.2(a).

(o) "Claims Administrator" means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Claims Administrator under this Settlement Agreement, including, without limitation, as set forth in Section 10.2.

(p) "Class Action Complaint" means the complaint captioned Plaintiffs' Class Action Complaint filed on consent in the Court on January 6, 2014.

(q) "Class Action Settlement" means that settlement set forth in this Settlement Agreement.

(r) "Class Counsel" means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Steven C. Marks of Podhurst Orseck, P.A. and Gene Locks of Locks Law Firm, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class.

(s) "Class Representatives" means Shawn Wooden and Kevin Turner, or such other or different persons as may be appointed by the Court as the representatives of the Settlement Class.

(t) "CMS" means the Centers for Medicare & Medicaid Services, the agency within the United States Department of Health and Human Services responsible for administration of the Medicare Program and the Medicaid Program.

(u) "Co-Lead Class Counsel" means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Christopher A. Seeger of Seeger Weiss LLP and Sol Weiss of Anapol Schwartz, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class in a lead role.

(v) "Collective Bargaining Agreement" means the August 4, 2011 Collective Bargaining Agreement between the NFL Management Council and the NFL Players Association, individually and together with all previous and future NFL Football collective bargaining agreements governing NFL Football players.

(w) "Counsel for the NFL Parties" means Paul, Weiss, Rifkind, Wharton & Garrison LLP, or any law firm or attorney so designated in writing by the NFL Parties.

(x) "Court" means the United States District Court for the Eastern District of Pennsylvania, Judge Anita Brody (or any successor judge designated by the United States District Court for the Eastern District of Pennsylvania), presiding in In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323.

(y) "Covenant Not to Sue" means the covenant not to sue set forth in Section 18.4.

(z) "CTE" means Chronic Traumatic Encephalopathy.

(aa) "Death with CTE" is defined in Exhibit 1.

(bb) "Deficiency" means any failure of a Settlement Class Member to provide required information or documentation to the Claims Administrator, as set forth in Section 8.5.

(cc) "Derivative Claim Form" means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Derivative Claimant claiming a Derivative Claimant Award, as set forth in ARTICLE VIII.

(dd) "Derivative Claim Package" means the Derivative Claim Form and other documentation, as set forth in Section 8.2(b).

(ee) "Derivative Claimants" means spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player.

(ff) "Derivative Claimant Award" means the payment of money from the Monetary Award of the subject Retired NFL Football Player to a Settlement Class Member who is a Derivative Claimant, as set forth in ARTICLE VII.

(gg) "Diagnosing Physician Certification" means that document which a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant must submit either as part of a Claim Package in order to receive a Monetary Award, as set forth in Section 8.2(a), or to receive BAP Supplemental Benefits, as set forth in Section 5.11, the contents of which shall be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties and that shall include, without limitation: (i) a certification under penalty of perjury by the diagnosing physician that the information provided is true and correct, (ii) the Qualifying Diagnosis being made consistent with the criteria in Exhibit 1 (Injury Definitions) and the date of diagnosis, and (iii) the qualifications of the diagnosing physician.

(hh) “Education Fund” means a fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

(ii) “Education Fund Amount” means the amount of Ten Million United States dollars (U.S. \$10,000,000), as set forth in Section 23.1(b).

(jj) “Effective Date” means (i) the day following the expiration of the deadline for appealing the entry by the Court of the Final Order and Judgment approving the Settlement Agreement and certifying the Settlement Class (or for appealing any ruling on a timely motion for reconsideration of such Final Order, whichever is later), if no such appeal is filed; or (ii) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

(kk) “Eligible Season” means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club’s Active List on the date of three (3) or more regular season or postseason games; or (ii) on a Member Club’s Active List on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on a Member Club’s injured reserve list or inactive list due to a concussion or head injury. A “half of an Eligible Season” means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was on a Member Club’s practice, developmental, or taxi squad roster for at least eight (8) regular or postseason games.

(ll) “Fairness Hearing” means the hearing scheduled by the Court to consider the fairness, reasonableness, and adequacy of this Settlement Agreement under Rule 23(e)(2) of the Federal Rules of Civil Procedure, and to determine whether a Final Order and Judgment should be entered.

(mm) “Final Approval Date” means the date on which the Court enters the Final Order and Judgment.

(nn) “Final Order and Judgment” means the final judgment and order entered by the Court, substantially in the form of Exhibit 4, and as set forth in ARTICLE XX.

(oo) “Funds” means the Settlement Trust Account, the BAP Fund, the Monetary Award Fund, along with the Education Fund.

(pp) “Governmental Payor” means any federal, state, or other governmental body, agency, department, plan, program, or entity that administers, funds, pays, contracts for, or provides medical items, services, and/or prescription drugs,

including, but not limited to, the Medicare Program, the Medicaid Program, Tricare, the Department of Veterans Affairs, and the Department of Indian Health Services.

(qq) “HIPAA” means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 42 U.S.C.) and the implementing regulations issued by the United States Department of Health and Human Services thereunder, and incorporates by reference the provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009)) pertaining to Protected Health Information.

(rr) This definition is intentionally left blank.

(ss) This definition is intentionally left blank.

(tt) This definition is intentionally left blank.

(uu) “Lien” means any statutory lien of a Government Payor or Medicare Part C or Part D Program sponsor; or any mortgage, lien, pledge, charge, security interest, or legal encumbrance, of any nature whatsoever, held by any person or entity, where there is a legal obligation to withhold payment of a Monetary Award, Supplemental Monetary Award, Derivative Claimant Award, or some portion thereof, to a Settlement Class Member under applicable federal or state law.

(vv) “Lien Resolution Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Lien Resolution Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE XI.

(ww) “Medicaid Program” means the federal program administered by the states under which certain medical items, services, and/or prescription drugs are furnished to Medicaid beneficiaries under Title XIX of the Social Security Act, 42 U.S.C. § 1396–1, *et seq.*

(xx) “Medicare Part C or Part D Program” means the program(s) under which Medicare Advantage, Medicare cost, and Medicare health care prepayment plan benefits and Medicare Part D prescription drug plan benefits are administered by private entities that contract with CMS.

(yy) “Medicare Program” means the Medicare Parts A and B federal program administered by CMS under which certain medical items, services, and/or prescription drugs are furnished to Medicare beneficiaries under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, *et seq.*

(zz) “Member Club” means any past or present member club of the NFL or any past member club of the American Football League.

(aaa) “Monetary Award” means the payment of money from the Monetary Award Fund to a Settlement Class Member, other than a Derivative Claimant, as set forth in ARTICLE VI.

(bbb) “Monetary Award Fund” means the sixty-five (65) year fund, as set forth in Section 6.8.

(ccc) “Monetary Award Grid” means that document attached as Exhibit 3.

(ddd) “MSP Laws” means the Medicare Secondary Payer Act set forth at 42 U.S.C. § 1395y(b), as amended from time to time, and implementing regulations, and other applicable written CMS guidance.

(eee) “NFL CBA Medical and Disability Benefits” means any disability or medical benefits available under the Collective Bargaining Agreement, including the benefits available under the Bert Bell/Pete Rozelle NFL Player Retirement Plan; NFL Player Supplemental Disability Plan, including the Neuro-Cognitive Disability Benefit provided for under Article 65 of the Collective Bargaining Agreement; the 88 Plan; Gene Upshaw NFL Player Health Reimbursement Account Plan; Former Player Life Improvement Plan; NFL Player Insurance Plan; and/or the Long Term Care Insurance Plan.

(fff) “NFL Football” means the sport of professional football as played in the NFL, the American Football League, the World League of American Football, the NFL Europe League, and the NFL Europa League. NFL Football excludes football played by all other past, present or future professional football leagues, including, without limitation, the All-American Football Conference.

(ggg) “NFL Medical Committees” means the various past and present medical committees, subcommittees and panels that operated or operate at the request and/or direction of the NFL, whether independent or not, including, without limitation, the Injury and Safety Panel, Mild Traumatic Brain Injury Committee, Head Neck and Spine Medical Committee, Foot and Ankle Subcommittee, Cardiovascular Health Subcommittee, and Medical Grants Subcommittee, and all persons, whether employees, agents or independent of the NFL, who at any time were members of or participated on each such panel, committee, or subcommittee.

(hhh) “Notice of Challenge Determination” means the written notice set forth in Section 4.3(a)(ii)-(iii).

(iii) “Notice of Deficiency” means that document that the Claims Administrator sends to any Settlement Class Member whose Claim Package or Derivative Claim Package contains a Deficiency, as set forth in Section 8.5.

(jjj) “Notice of Derivative Claimant Award Determination” means the written notice set forth in Section 9.2.

(kkk) “Notice of Monetary Award Claim Determination” means the written notice set forth in Section 9.1.

(lll) “Notice of Registration Determination” means the written notice set forth in Section 4.3.

(mmm) “Offsets” means downward adjustments to Monetary Awards, as set forth in Section 6.5(b).

(nnn) “Opt Out,” when used as a verb, means the process by which any Retired NFL Football Player, Representative Claimant or Derivative Claimant otherwise included in the Settlement Class exercises the right to exclude himself or herself from the Settlement Class in accordance with Fed. R. Civ. P. 23(c)(2).

(ooo) “Opt Outs,” when used as a noun, means those Retired NFL Football Players, Representative Claimants and Derivative Claimants who would otherwise have been included in the Settlement Class and who have timely and properly exercised their rights to Opt Out and therefore, after the Effective Date, are not Settlement Class Members.

(ppp) “Other Party” means every person, entity, or party other than the Released Parties.

(qqq) “Parkinson’s Disease” is defined in Exhibit 1.

(rrr) “Parties” means the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, and the NFL Parties.

(sss) “Personal Signature” means the actual signature by the person whose signature is required on the document. Unless otherwise specified in this Settlement Agreement, a document requiring a Personal Signature may be submitted by an actual original “wet ink” signature on hard copy, or a PDF or other electronic image of an actual signature, but cannot be submitted by an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(ttt) “Preliminary Approval and Class Certification Order” means the order, upon entry by the Court, preliminarily approving the Class Action Settlement and conditionally certifying the Settlement Class and Subclasses.

(uuu) “Protected Health Information” means individually identifiable health information, as defined in 45 C.F.R. § 160.103.

(vvv) “Qualified BAP Providers” means neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, and board-

certified neurologists, eligible to conduct baseline assessments of Retired NFL Football Players under the BAP, as set forth in Section 5.7(a).

(www) "Qualified Pharmacy Vendor(s)" means one or more nationwide mail order pharmacies contracted to provide approved pharmaceutical prescriptions as part of the BAP Supplemental Benefits, as set forth in Section 5.7(b).

(xxx) "Qualifying Diagnosis" or "Qualifying Diagnoses" means Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, ALS, and/or Death with CTE, as set forth in Exhibit 1 (Injury Definitions).

(yyy) "Related Lawsuits" means all past, present and future actions brought by one or more Releasors against one or more Released Parties pending in the Court, other than the Class Action Complaint, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum that arise out of, are based upon or are related to the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, alleged, or referred to in the Class Action Complaint, except that Settlement Class Members' claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits are not Related Lawsuits.

(zzz) "Released Claims" means those claims released as set forth in Section 18.1 and Section 18.2.

(aaaa) "Released Parties" for purposes of the Released Claims means (i) the NFL Parties (including all persons, entities, subsidiaries, divisions, and business units composed thereby), together with (ii) each of the Member Clubs, (iii) each of the NFL Parties' and Member Clubs' respective past, present, and future agents, directors, officers, employees, independent contractors, general or limited partners, members, joint venturers, shareholders, attorneys, trustees, insurers (solely in their capacities as liability insurers of those persons or entities referred to in subparagraphs (i) and (ii) above and/or arising out of their relationship as liability insurers to such persons or entities), predecessors, successors, indemnitees, and assigns, and their past, present, and future spouses, heirs, beneficiaries, estates, executors, administrators, and personal representatives, including, without limitation, all past and present physicians who have been employed or retained by any Member Club and members of all past and present NFL Medical Committees; and (iv) any natural, legal, or juridical person or entity acting on behalf of or having liability in respect of the NFL Parties or the Member Clubs, in their respective capacities as such; and, as to (i)-(ii) above, each of their respective Affiliates, including their Affiliates' officers, directors, shareholders, employees, and agents. For the avoidance of any doubt, Riddell is not a Released Party.

(bbbb) "Releases" means the releases set forth in ARTICLE XVIII.

(cccc) "Releasors" means the releasors set forth in Section 18.1.

(dddd) "Representative Claimants" means authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players.

(eeee) "Retired NFL Football Players" means all living NFL Football players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

(ffff) "Riddell" means Riddell, Inc.; All American Sports Corporation; Riddell Sports Group, Inc.; Easton-Bell Sports, Inc.; Easton-Bell Sports, LLC; EB Sports Corp.; and RBG Holdings Corp., and each of their respective past, present, and future Affiliates, directors, officers, employees, general or limited partners, members, joint venturers, shareholders, agents, trustees, insurers (solely in their capacities as such), reinsurers (solely in their capacities as such), predecessors, successors, indemnitees, and assigns.

(gggg) "Special Master" means that person appointed by the Court pursuant to Federal Rule of Civil Procedure 53 to oversee the administration of the Settlement Agreement, as set forth in Section 10.1.

(hhhh) "Settlement Agreement" means this Settlement Agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

(iiii) "Settlement Amount" means the amount of Seven Hundred and Fifty Million United States dollars (U.S. \$750,000,000), as set forth in Section 23.1(a).

(jjjj) "Settlement Class and Subclasses" is defined in Section 1.1 and Section 1.2.

(kkkk) "Settlement Class Member" means each Retired NFL Football Player, Representative Claimant and/or Derivative Claimant in the Settlement Class; provided, however, that the term Settlement Class Member as used herein with respect to any right or obligation after the Effective Date does not include any Opt Outs.

(llll) "Settlement Class Notice" means that notice, in the form of Exhibit 5, and as set forth in Section 14.1, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

(mmmm) "Settlement Class Notice Agent" means that person or entity who will implement the Settlement Class Notice Plan and who will be responsible for the publication and provision of the Settlement Class Notice.

(nnnn) "Settlement Class Notice Payment" means a maximum of Four Million United States dollars (U.S. \$4,000,000), as set forth in Section 23.1(c), for the costs of Settlement Class Notice, including any supplemental notice required, and compensation of the Settlement Class Notice Agent and the Claims Administrator to the extent the Claims Administrator performs notice-related duties that have been agreed to by the NFL Parties.

(oooo) "Settlement Class Notice Plan" means that document which sets forth the methods, timetable, and responsibilities for providing Settlement Class Notice to Settlement Class Members, as set forth in Section 14.1.

(pppp) "Settlement Date" means the date by which Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties have all signed this Settlement Agreement on behalf of the Class and Subclass Representatives, Settlement Class and Subclasses, and the NFL Parties, respectively.

(qqqq) "Settlement Trust" means the trust enacted pursuant to the Settlement Trust Agreement, as set forth in Section 23.7.

(rrrr) "Settlement Trust Account" means that account created under the Settlement Trust Agreement and held by the Trustee into which the NFL Parties will make payments pursuant to ARTICLE XXIII of this Settlement Agreement.

(ssss) "Settlement Trust Agreement" means the agreement that will establish the Settlement Trust and will be entered into by Co-Lead Class Counsel, the NFL Parties, and the Trustee, as set forth in Section 23.7(c).

(ttt) "Signature" means the actual signature by the person whose signature is required on the document, or on behalf of such person by a person authorized by a power of attorney or equivalent document to sign such documents on behalf of such person. Unless otherwise specified in this Settlement Agreement, a document requiring a Signature may be submitted by: (i) an actual original "wet ink" signature on hard copy; (ii) a PDF or other electronic image of an actual signature; or (iii) an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(uuuu) "Stadium Program Bonds" means the NFL's G3 and G4 bonds.

(vvvv) "Stroke" means stroke, as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10). A medically diagnosed Stroke does not include a transient cerebral ischaemic attack and related syndromes, as defined by ICD-10.

(wwww) "Subclass Counsel" means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely Arnold Levin of Levin, Fishbein, Sedran & Berman for Subclass 1, and Dianne M. Nast of NastLaw LLC for Subclass 2, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Subclasses 1 and 2.

(xxxx) "Subclass Representatives" means Shawn Wooden and Kevin Turner, or such other or different persons as may be designated by the Court as the representatives of the Settlement Subclasses 1 and 2.

(yyyy) "Supplemental Monetary Award" means the supplemental payment of monies from the Monetary Award Fund to a Settlement Class Member, as set forth in Section 6.6.

(zzzz) "Traumatic Brain Injury" means severe traumatic brain injury unrelated to NFL Football play, that occurs during or after the time the Retired NFL Football Player played NFL Football, consistent with the definitions in the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), Codes 854.04, 854.05, 854.14 and 854.15, and the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), Codes S06.9x5 and S06.9x6.

(aaaaa) "Tricare" means the federal program managed and administered by the United States Department of Defense through the Tricare Management Activity under which certain medical items, services, and/or prescription drugs are furnished to eligible members of the military services, military retirees, and military dependents under 10 U.S.C. § 1071, *et seq.*

(bbbbbb) "Trustee" means that person or entity approved by the Court as trustee of the Settlement Trust Account and as administrator of the qualified settlement fund for purposes of Treasury Regulation §1.468B-2(k)(3), as set forth in ARTICLE XXIII.

ARTICLE III Settlement Benefits for Class Members

Section 3.1 The Class and Subclass Representatives, by and through Co-Lead Class Counsel, Class Counsel and Subclass Counsel, and the NFL Parties, by and through Counsel for the NFL Parties, agree that, in consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of the Class Action Complaint and the Related Lawsuits, and subject to the terms and

conditions of this Settlement Agreement, the NFL Parties will, in addition to other obligations set forth in this Settlement Agreement:

(a) Provide compensation, as prescribed elsewhere in this Settlement Agreement, to those Settlement Class Members who are determined by the Claims Administrator to qualify for Monetary Awards or Derivative Claimant Awards pursuant to the proof and documentation requirements and criteria set forth in this Settlement Agreement;

(b) Provide qualified Settlement Class Members who are Retired NFL Football Players with the option to participate in the BAP and receive a BAP baseline assessment examination and BAP Supplemental Benefits, if eligible, pursuant to the requirements and criteria set forth in this Settlement Agreement; and

(c) Establish the Education Fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

ARTICLE IV **Information and Registration Process**

Section 4.1 Information

(a) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel will cause to be established and maintained a public website containing information about the Class Action Settlement (the “Settlement Website”), including the Settlement Class Notice and “Frequently Asked Questions.” Within ninety (90) days after the Effective Date, Co-Lead Class Counsel will cause the Settlement Website to be transitioned for claims administration purposes. The Settlement Website will be the launching site for secure web-based portals established and maintained by the Claims Administrator, BAP Administrator, and/or Lien Resolution Administrator for use by Settlement Class Members and their designated attorneys throughout the term of the Class Action Settlement. The Claims Administrator will post all necessary information about the Class Action Settlement on the Settlement Website, including, as they become available, information about registration deadlines and methods to participate in the BAP, the Claim Package requirements and Monetary Awards, and the Derivative Claim Package requirements and Derivative Claimant Awards. All content posted on the Settlement Website will be subject to advance approval by Co-Lead Class Counsel and Counsel for the NFL Parties.

(b) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel also will cause to be established and maintained an automated telephone system that uses a toll-free number or numbers to provide information about the Class Action Settlement. Within ninety (90) days after the

Effective Date, Co-Lead Class Counsel will cause the automated telephone system to be transitioned for claims administration purposes. Through this system, Settlement Class Members may request and obtain copies of the Settlement Class Notice, Settlement Agreement, Claim Form, Derivative Claim Form, and Appeals Form, and they may speak with operators for further information.

Section 4.2 Registration Methods and Requirements

(a) The Claims Administrator will establish and administer both online and hard copy registration methods for participation in the Class Action Settlement.

(b) The registration requirements will include information sufficient to determine if a registrant is a Settlement Class Member, including: (i) name; (ii) address; (iii) date of birth; (iv) Social Security Number (if any); (v) email address (if any), and whether email, the web-based portal on the Settlement Website, or U.S. mail is the preferred method of communication; (vi) identification as a Retired NFL Football Player, Representative Claimant or Derivative Claimant; (vii) dates and nature of NFL Football employment (e.g., Active List, practice squad, developmental squad), and corresponding identification of the employer Member Club(s) or assigned team(s) (for Retired NFL Football Players, or, for the subject Retired NFL Football Player or deceased Retired NFL Football Player in the case of Representative Claimants and Derivative Claimants); and (viii) Signature of the registering purported Settlement Class Member.

(i) In addition to the registration requirements in this Section 4.2(b), Representative Claimants also will identify the subject deceased or legally incapacitated or incompetent Retired NFL Football Player, including name, last known address, date of birth, and Social Security Number (if any), and will provide a copy of the court order, or other document issued by an official of competent jurisdiction, providing the authority to act on behalf of that deceased or legally incapacitated or incompetent Retired NFL Football Player.

(ii) In addition to the registration requirements in this Section 4.2(b), Derivative Claimants also will identify the subject Retired NFL Football Player or deceased Retired NFL Football Player and the relationship by which they assert the right under applicable state law to sue independently or derivatively.

(c) Unless good cause, as set forth in subsection (i), is shown, Settlement Class Members must register on or before 180 days from the date after the Effective Date that the Claims Administrator provides notice of the registration methods and requirements on the Settlement Website and on the automated telephone system. If a Settlement Class Member does not register by that deadline, that Settlement Class Member will be deemed ineligible for the BAP and BAP Supplemental Benefits, Monetary Awards and Derivative Claimant Awards.

(i) Good cause will include, without limitation, (a) that a Settlement Class Member who is a Representative Claimant had not been ordered by a court or other official of competent jurisdiction to be the authorized representative of the subject deceased or legally incapacitated or incompetent Retired NFL Football Player prior to the registration deadline (and the Representative Claimant seeks to register within 180 days of authorization by the court or other official of competent jurisdiction), or (b) that the subject Retired NFL Football Player timely registered prior to his death or becoming legally incapacitated or incompetent and his Representative Claimant seeks to register for that Retired NFL Football Player; or (c) that the subject Retired NFL Football Player timely registered and the Derivative Claimant seeks to register within thirty (30) days of that Retired NFL Football Player's submission of a Claim Package.

Section 4.3 Registration Review

(a) Upon receipt of a purported Settlement Class Member's registration, the Claims Administrator will review the information to determine whether the purported Settlement Class Member is a Settlement Class Member under the Settlement Agreement, and whether he or she has timely registered. In order to determine qualification for the BAP, as set forth in Section 5.1, the Claims Administrator will also determine if a registering Retired NFL Football Player has identified his participation in NFL Football that earns him at least one half of an Eligible Season. The Claims Administrator will then issue a favorable or adverse Notice of Registration Determination, within forty-five (45) days of receipt of the purported Settlement Class Member's registration, informing the purported Settlement Class Member whether he or she is a Settlement Class Member who has properly registered. To the extent the volume of registrations warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties.

(i) Favorable Notices of Registration Determination will include information regarding the sections of the Settlement Website and/or secure web-based portals that provide detailed information regarding the Claim Package and Monetary Awards, the Derivative Claim Package and Derivative Claimant Awards and, for Settlement Class Members who are Retired NFL Football Players, information regarding the BAP. The Notice of Registration Determination will inform the Settlement Class Member of his or her unique identifying number for future use, including on a Claim Form or Derivative Claimant Form.

(ii) Adverse Notices of Registration Determination will include information regarding how the purported Settlement Class Member can challenge the determination. The purported Settlement Class Member may submit a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The purported Settlement Class Member must present a sworn statement or other evidence in support of any written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iii) The NFL Parties can challenge, for good cause, a favorable Notice of Registration Determination by submitting a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The NFL Parties must present evidence in support of the written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iv) Any Notice of Challenge Determination may be appealed by the purported Settlement Class Member or the NFL Parties, provided that the NFL Parties' appeal is limited to challenging the purported Retired NFL Football Player's or subject Retired NFL Football Player's status as a Retired NFL Football Player, in writing to the Court within sixty (60) days after the date of the Notice of Challenge Determination. The parties may present evidence in support of, or in opposition to, the appeal. The Court will be provided access to all documents and information available to the Claims Administrator to aid in determining the appeal. The Court may, in its discretion, refer the appeal to the Special Master. The decision of the Court or the Special Master shall be final and binding.

(v) If either Co-Lead Class Counsel or Counsel for the NFL Parties believe that the Claims Administrator has issued a Notice of Registration Determination that reflects an improper interpretation of the Settlement Class definition set forth in Section 1.1, such counsel may petition the Court to resolve the issue, as set forth in Section 10.1(b)(i)(2). The Court may, in its discretion, refer the matter to the Special Master. If the Court or the Special Master determines that the Claims Administrator misinterpreted the Settlement Class definition, the decision of the Court or the Special Master will supersede the prior determination by the Claims Administrator.

ARTICLE V Baseline Assessment Program

Section 5.1 Qualification. All Retired NFL Football Players with at least one half of an Eligible Season, as defined in Section 2.1(kk), who timely registered to participate in the Class Action Settlement, as set forth in ARTICLE IV, will qualify for the BAP. For the avoidance of any doubt, an eligible Retired NFL Football Player who submits a claim for a Monetary Award, whether successful or not, may participate in the BAP, except a Retired NFL Football Player who submits a successful claim for a Monetary Award is not eligible to later receive BAP Supplemental Benefits.

Section 5.2 Scope of Program. The BAP will provide the opportunity for each qualified Retired NFL Football Player, as set forth in Section 5.1, to receive one (1) baseline assessment examination, which includes: (a) a standardized neuropsychological examination in accordance with the testing protocol set forth in Exhibit 2 performed by a neuropsychologist certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, who is a Qualified BAP Provider; and (b) a basic

neurological examination performed by a board-certified neurologist who is a Qualified BAP Provider. The diagnosis of Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment and Level 2 Neurocognitive Impairment made pursuant to the BAP must be agreed to by both the neuropsychologist and board-certified neurologist serving as Qualified BAP Providers. BAP baseline assessment examinations are intended to establish a physician/patient relationship between the Retired NFL Football Player and his Qualified BAP Providers. Retired NFL Football Players diagnosed during their BAP baseline assessment examinations by Qualified BAP Providers with Level 1 Neurocognitive Impairment will be eligible to receive BAP Supplemental Benefits, as set forth in Section 5.11. For the avoidance of any doubt, a Qualifying Diagnosis of Alzheimer's Disease, Parkinson's Disease, ALS or Death with CTE shall not be made through the BAP baseline assessment examination.

Section 5.3 Deadline for BAP Baseline Assessment Examination. A Retired NFL Football Player electing to receive a BAP baseline assessment examination must take it: (i) within two (2) years of the commencement of the BAP if he is age 43 or older on the Effective Date; or (ii) if he is younger than age 43 on the Effective Date, before his 45th birthday or within ten (10) years of the commencement of the BAP, whichever occurs earlier.

Section 5.4 Monetary Award Offset. If a Retired NFL Football Player in Subclass 1 chooses not to participate in the BAP and receives a Qualifying Diagnosis, as set forth in Section 6.3, on or after the Effective Date, that Retired NFL Football Player will be subject to a Monetary Award Offset (as set forth in Section 6.5(b)(iv)) based on his non-participation in the BAP unless the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis other than ALS prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3. This Offset does not apply to a Retired NFL Football Player who is in Subclass 2.

Section 5.5 BAP Term. The BAP will commence one hundred and twenty (120) days after the Effective Date and will end ten (10) years after it commences, except that the provision of BAP Supplemental Benefits to Retired NFL Football Players diagnosed with Level 1 Neurocognitive Impairment, as set forth in Exhibit 1, may extend beyond the term of the BAP for up to five (5) years as set forth in Section 5.11. Retired NFL Football Players, who are qualified as set forth in Section 5.1, will be entitled to one (1) baseline assessment examination within the applicable time limitations set forth in Section 5.3.

Section 5.6 BAP Administrator

(a) **Appointment and Oversight**

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint The Garretson Resolution Group, Inc. ("Garretson Group") as BAP Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the BAP Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the BAP Administrator will provide that the BAP Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the BAP-related provisions of the Settlement Agreement, and will require that the BAP Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the BAP Administrator. The BAP Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) will oversee the BAP Administrator, and may, at his or her sole discretion, request reports or information from the BAP Administrator.

(v) Beyond the reporting requirements set forth in Section 5.6(a)(iii)-(iv), beginning one month after the Effective Date, the BAP Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the BAP, and thereafter on a quarterly basis, or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, regarding the status and progress of the BAP. The monthly (or quarterly) report will include, without limitation, information regarding activity in the BAP, including: (a) the number and identity of Retired NFL Football Players with pending BAP appointments, (b) the monthly and total number of Retired NFL Football Players who took part in the BAP, and the identity of each Settlement Class Member who took part in the preceding month; (c) the monthly and total monetary amounts paid to Qualified BAP Providers; (d) the monthly and total number of Retired NFL Football Players eligible for BAP Supplemental Benefits, as set forth in Section 5.11, and the identity of each such Settlement Class Member; (e) any Retired NFL Football Player complaints regarding specific Qualified BAP Providers; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the BAP Administrator in the preceding month; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the BAP Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Retired NFL Football Players who took part in the BAP; (b) the monetary amount paid to Qualified BAP Providers; (c) the number of Retired NFL Football Players eligible for BAP Supplemental Benefits; (d) the

expenses/administrative costs incurred by the BAP Administrator; (e) the projected expenses/administrative costs for the remainder of the BAP Fund term; (f) the monies remaining in the BAP Fund; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(b) Compensation and Expenses. Reasonable compensation of the BAP Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the BAP Administrator's responsibilities will be paid out of the BAP Fund. The BAP Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the BAP Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the BAP Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the BAP Administrator will refund that amount to the BAP Fund.

(c) Liability. The Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the BAP Administrator.

(d) Replacement. The BAP Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the BAP Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed BAP Administrator for appointment by the Court.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the BAP Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the BAP Administrator, including, without limitation, its executive leadership team and all employees conducting BAP-related work, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the BAP Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the BAP Administrator regularly provides settlement administration, lien resolution, and other related services to settling parties and their attorneys, and Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master acknowledge and

agree that it shall not be a conflict of interest for the BAP Administrator to provide such services to such individuals or to receive compensation for such work.

Section 5.7 Retention and Oversight of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s)

(a) **Qualified BAP Providers**

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will establish and maintain a network of Qualified BAP Providers to provide baseline assessment examinations to Retired NFL Football Players, and to provide medical treatment to Retired NFL Football Players who receive BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator's selection of all Qualified BAP Providers will be subject to written approval of Co-Lead Class Counsel and Counsel for the NFL Parties, each of which will have the right to veto the selection of seven (7) Qualified BAP Providers unconditionally.

(ii) The BAP Administrator will select Qualified BAP Providers based on the following criteria: (a) education, training, licensing, credentialing, board certification, and insurance coverage; (b) ability to provide the specified baseline assessment examinations under the BAP; (c) ability to provide medical services under the BAP Supplemental Benefits; (d) ability to provide all required examinations and services in a timely manner; (e) geographic proximity to Retired NFL Football Players; and (f) rate structure and payment terms. Under no circumstances will a Qualified BAP Provider be selected or approved who has been convicted of a crime of dishonesty.

(iii) In order to be eligible for selection, each Qualified BAP Provider must provide the following information to the BAP Administrator: (a) state professional license number; (b) National Provider Identifier; (c) board-certification information, if any; (d) evidence of proper licensing and insurance coverage under applicable state laws; (e) experience, including number of years as a healthcare provider; (f) primary and additional service locations; (g) mailing and billing addresses; (h) tax identification information; (i) ability to provide the specified baseline assessment examinations; (j) capacity for new patients; (k) appointment accessibility; (l) languages spoken; (m) criminal record; and (n) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Provider (the "Provider Contract") to provide the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits. The Provider Contract will include, among other things, a description of the baseline assessment examinations that will be provided under the BAP; rates, billing, and payment terms; terms relating to licensing, credentials, board certification, and other qualifications; the amount and type of insurance to be maintained by the Qualified BAP Provider; procedures for scheduling, rescheduling, and cancelling BAP appointments; document retention policies and

procedures; and fraud policies. The Provider Contract will further provide: (a) that the Qualified BAP Provider will release and hold harmless the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Provider as part of the BAP; (b) that the Qualified BAP Provider will not seek payment from the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any medical service(s), examination(s), and/or test(s) or any medical treatment or care that are not part of the specified baseline assessment examinations or authorized for payment under the terms of the BAP Supplemental Benefits, except that the Qualified BAP Provider may seek payment from a Retired NFL Football Player or, where applicable, his or her insurer for any medical service(s), examination(s), and/or test(s) or any medical treatment or care that are not part of the specified baseline assessment examinations or BAP Supplemental Benefits, where the Retired NFL Football Player, or, where applicable, his or her insurer, has agreed in writing to authorize and pay for such medical service(s), examination(s), and/or test(s) or any medical treatment or care; and (c) that the Qualified BAP Provider will retain medical records for Retired NFL Football Players in accordance with Section 5.10.

(1) The Provider Contract will be drafted by the BAP Administrator, as overseen by the Special Master, and in consultation with and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties.

(2) The Provider Contract's fraud policies will contain the following warning against fraudulent conduct: "As a Qualified BAP Provider you have agreed to provide your services and make your diagnosis in good faith in accordance with best medical practices. Your diagnoses and billings will be audited on a periodic and random basis subject to the discretion of the BAP Administrator and Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). Any finding of fraudulent diagnoses or billings by you will be subject to, without limitation, referral to appropriate regulatory and disciplinary boards and agencies and/or federal authorities, the immediate termination of this contract, and your disqualification from serving as a diagnosing physician in any aspect of the Class Action Settlement."

(v) The BAP Administrator will audit the credentialing and performance of Qualified BAP Providers on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL Parties. The BAP Administrator may conduct onsite visits at the Qualified BAP Providers on a random or adverse selection basis to confirm their compliance with the Provider Contract described in Section 5.7(a)(iv).

(vi) All Qualified BAP Providers will bill the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for BAP baseline assessment examinations and treatments under the BAP Supplemental Benefits, subject to the coverage limits of the BAP Supplemental Benefits, consistent with the Provider Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator will establish and administer a system to audit Qualified BAP Providers' procedures for billing and providing BAP baseline assessment examinations and BAP Supplemental Benefits treatments. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized medical services. The BAP Administrator will bring abusive and fraudulent Qualified BAP Provider billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Provider Contract of any Qualified BAP Providers that are not in compliance with its terms.

(b) Qualified Pharmacy Vendor(s)

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will contract with one or more Qualified BAP Pharmacy Vendor(s) to provide pharmaceuticals covered by the BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator's selection of the Qualified BAP Pharmacy Vendor(s) will be subject to written approval of the Special Master, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties.

(ii) The BAP Administrator will select Qualified BAP Pharmacy Vendor(s) based on the following criteria: (a) proper licensing for operation as a mail order pharmacy in all U.S. states and territories; (b) nationwide coverage and ease of administration; and (c) rate structure and payment terms.

(iii) In order to be eligible for selection, each Qualified BAP Pharmacy Vendor must provide the following information to the BAP Administrator: (a) federal DEA and/or state license numbers, as applicable; (b) evidence of proper licensing under applicable state laws; (c) experience, including number of years as a mail order pharmacy; (d) information about processes required to submit and fulfill mail order prescriptions; (e) average processing and delivery time from submission of a valid prescription; (f) policies related to generic substitution of name-brand pharmaceutical products; (g) mailing and billing addresses; (h) tax identification information; (i) languages spoken; and (j) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Pharmacy Vendor (the "Pharmacy Contract") to provide the pharmaceuticals covered under the BAP Supplemental Benefits. The

Pharmacy Contract will include, among other things, a description of the pharmaceutical therapies that will be covered under the BAP Supplemental Benefits; rates, billing, and payment terms; terms relating to qualifications; procedures for submitting, filling, and shipping prescriptions; document retention policies and procedures; and fraud policies. The Pharmacy Contract will further provide: (a) that the Qualified BAP Pharmacy Vendor will release and hold harmless the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Pharmacy Vendor as part of the BAP; and (b) that the Qualified BAP Pharmacy Vendor will not seek payment from the Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any prescriptions that are authorized for payment under the terms of the BAP Supplemental Benefits.

(v) The BAP Administrator will audit the performance of Qualified BAP Pharmacy Vendor(s) on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL.

(vi) All Qualified BAP Pharmacy Vendors will be reimbursed by the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP, subject to the coverage limits of the BAP Supplemental Benefits. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for covered prescriptions consistent with the Pharmacy Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator will establish and administer a system to audit Qualified BAP Pharmacy Vendor(s)' procedures for billing and providing approved BAP Supplemental Benefits prescriptions. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized prescriptions. The BAP Administrator will bring abusive and fraudulent Qualified BAP Pharmacy Vendor billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Pharmacy Contract of any Qualified BAP Pharmacy Vendor that are not in compliance with its terms.

Section 5.8 Scheduling and Providing Baseline Assessment Examinations. The Parties will establish, subject to Court approval, processes and procedures governing the scheduling and provision of BAP examinations.

Section 5.9 Other Communications with Retired NFL Football Players

(a) The BAP Administrator will send an Explanation of Benefits (“EOB”) statement to each Retired NFL Football Player following a BAP appointment. The statement will describe the services and medical examinations that were performed during the appointment.

(b) Beginning one (1) year after the Effective Date of the Settlement Agreement, the BAP Administrator will send Retired NFL Football Players who have not received baseline assessments and remain eligible to do so, an annual statement describing the BAP and requesting that he update any contact information that has changed in the preceding year.

(c) If a Retired NFL Football Player is represented by counsel and has provided such notice to the BAP Administrator, the BAP Administrator will copy his counsel of record on any written communications with the Retired NFL Football Player.

Section 5.10 Use and Retention of Medical Records

(a) All Retired NFL Football Players who participate in the BAP will be encouraged to provide their confidential medical records for use in medical research into cognitive impairment and safety and injury prevention with respect to football players. The provision of such medical records shall be subject to the reasonable informed consent of the Retired NFL Football Players, and in compliance with applicable law, including a HIPAA-compliant authorization form. Medical records and information used in medical research will be kept confidential.

(b) The BAP Administrator will retain the medical records of Retired NFL Football Players and other program-defined forms that must be completed by the Qualified BAP Providers.

(c) Qualified BAP Providers who provide BAP baseline assessment examinations will be required to retain all medical records from such visits in compliance with applicable state and federal laws; provided, however, that each Qualified BAP Provider will be required to retain all medical records in the format(s) prescribed by applicable state and federal laws and, notwithstanding any shorter time period permitted under applicable laws, will be required to retain such medical records for not less than ten (10) years after the conclusion of the BAP term.

(d) All Retired NFL Football Player medical records will be treated as confidential, as set forth in Section 17.2.

Section 5.11 BAP Supplemental Benefits. Each Retired NFL Football Player diagnosed by Qualified BAP Providers with a Level 1 Neurocognitive Impairment, as defined in Exhibit 1, shall be eligible for BAP Supplemental Benefits related to the Retired NFL Football Player’s impairment in the form of medical treatment, counseling and/or examination by Qualified BAP Providers, including, if medically

needed and prescribed by a Qualified BAP Provider, pharmaceuticals by Qualified BAP Pharmacy Vendor(s). BAP Supplemental Benefits shall comprise medical treatments and/or examinations generally accepted by the medical community. Subject to Sections 5.14, 23.1(a) and 23.3 of this Agreement, the monetary parameters for these benefits, taking into account such factors as the number of Retired NFL Football Players using the BAP and diagnosed with Level 1 Neurocognitive Impairment, shall be determined by Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, and with the approval of the Court. The BAP Supplemental Benefits must be used within the term of the BAP or within five (5) years of diagnosis of Level 1 Neurocognitive Impairment by Qualified BAP Providers, even if the five (5) year period extends beyond the term of the BAP, whichever is later. The BAP Administrator, as overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), and in consultation with, and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties, will establish the procedures governing BAP Supplemental Benefits.

Section 5.12 Diagnosing Physician Certifications. Qualified BAP Providers who diagnose a Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment, as set forth in Exhibit 1, must support that diagnosis with a Diagnosing Physician Certification and supporting medical records. The Qualified BAP Provider must provide the Diagnosing Physician Certification and copies of the supporting medical records to the Retired NFL Football Player, his counsel (if any), and the BAP Administrator.

Section 5.13 Conflicting Opinions of Qualified BAP Providers. If there is a lack of agreement, as required by Section 5.2 and Exhibit 1, between the two Qualified BAP Providers regarding whether a Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, the BAP Administrator may in its discretion: (a) request that the Qualified BAP Providers confer with each other in an attempt to resolve the conflict; (b) request that a second BAP baseline assessment examination be conducted by different Qualified BAP Providers; or (c) refer the results of the BAP baseline assessment examination and all relevant medical records to the Court for review and decision. In the event the conflict is referred to the Court, the decision of the Court as to whether the Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, will be final and binding.

Section 5.14 Funding. All aspects of the BAP, including, without limitation, its costs and expenses, payment of Qualified BAP providers, compensation of the BAP Administrator, and BAP Supplemental Benefits, will be paid from the BAP Fund. At the conclusion of the term of the BAP, the BAP Administrator will determine, in consultation with the Court, the maximum coverage amount necessary to hold in reserve for up to five (5) years for the provision of BAP Supplemental Benefits to Retired NFL Football Players diagnosed with Level 1 Neurocognitive Impairment during the term of the BAP, as set forth in Section 5.11. Any funds remaining in the BAP Fund after all BAP Supplemental Benefits have been provided to or otherwise reserved for

eligible Retired NFL Football Players will be transferred to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

ARTICLE VI **Monetary Awards for Qualifying Diagnoses**

Section 6.1 Eligible Retired NFL Football Players and Representative Claimants will be entitled to Monetary Awards as set forth in this Article.

Section 6.2 Eligibility

(a) A Settlement Class Member who is a Retired NFL Football Player or Representative Claimant is eligible for a Monetary Award if, and only if: (i) the Settlement Class Member timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (ii) the subject Retired NFL Football Player or deceased Retired NFL Football Player was diagnosed with a Qualifying Diagnosis; and (iii) the Settlement Class Member timely submits a Claim Package, subject to the terms and conditions set forth in ARTICLE VIII.

(b) A Representative Claimant of a deceased Retired NFL Football Player will be eligible for a Monetary Award only if the deceased Retired NFL Football Player died on or after January 1, 2006, or if the Court determines that a wrongful death or survival claim filed by the Representative Claimant would not be barred by the statute of limitations under applicable state law as of: (i) the date the Representative Claimant filed litigation against the NFL (and, where applicable, NFL Properties) relating to the subject matter of these lawsuits, if such a wrongful death or survival claim was filed prior to the Settlement Date; or (ii) the Settlement Date, where no such suit has previously been filed.

Section 6.3 Qualifying Diagnoses

(a) The following, as defined in Exhibit 1, are Qualifying Diagnoses eligible for a Monetary Award: (a) Level 1.5 Neurocognitive Impairment; (b) Level 2 Neurocognitive Impairment; (c) Alzheimer's Disease; (d) Parkinson's Disease; (e) Death with CTE; and (f) ALS.

(b) All Qualifying Diagnoses must be made by properly credentialed physicians as set forth in Exhibit 1 (Injury Definitions) for the particular Qualifying Diagnosis. A Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment may be made through a BAP baseline assessment examination as set forth in Section 5.2 and consistent with the terms of Exhibit 1 (Injury Definitions).

Section 6.4 Modification of Qualifying Diagnoses

(a) Following the Effective Date, on a periodic basis not to exceed once every ten (10) years, Co-Lead Class Counsel and Counsel for the NFL Parties agree to discuss in good faith possible modifications to the definitions of

Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. No such modifications can be made absent written agreement between Co-Lead Class Counsel and Counsel for the NFL Parties and approval by the Court.

(b) In no event will modifications be made to the Monetary Award levels in the Monetary Award Grid, except for inflation adjustment(s) as set forth in Section 6.7.

Section 6.5 Determination of Monetary Awards

(a) Settlement Class Members who the Claims Administrator determines are entitled to Monetary Awards will be compensated in accordance with the terms of the Monetary Award Grid and all applicable Offsets, as set forth in Exhibit 3 and below, except such compensation will be reduced by one percent (1%) to the extent that any Derivative Claimants submit for, and are entitled to, a Derivative Claimant Award based upon their relationships with the Retired NFL Football Player, as set forth in ARTICLE VII.

(b) Offsets. All Monetary Awards will be subject to downward adjustments, including based on a Settlement Class Member's age at the time of the Qualifying Diagnosis (as reflected in the Monetary Award Grid, as set forth in Exhibit 3), and as follows:

(i) Number of Eligible Seasons:

- (1) 4.5 Eligible Seasons: - 10%
- (2) 4 Eligible Seasons: - 20%
- (3) 3.5 Eligible Seasons: - 30%
- (4) 3 Eligible Seasons: - 40%
- (5) 2.5 Eligible Seasons: - 50%
- (6) 2 Eligible Seasons: - 60%
- (7) 1.5 Eligible Seasons: - 70%
- (8) 1 Eligible Season: - 80%
- (9) 0.5 Eligible Seasons: - 90%
- (10) 0 Eligible Seasons: - 97.5%

(ii) Medically diagnosed Stroke occurring prior to a Qualifying Diagnosis: - 75%

(iii) Medically diagnosed Traumatic Brain Injury occurring prior to a Qualifying Diagnosis: - 75%

(iv) Non-participation in the BAP by a Retired NFL Football Player in Subclass 1, except where the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3: - 10%

(c) For purposes of calculating the total number of Eligible Seasons earned by a Retired NFL Football Player or deceased Retired NFL Football Player under this Settlement Agreement, each Eligible Season and each half of an Eligible Season for which the subject Retired NFL Football Player did not otherwise earn an Eligible Season, will be summed together to reach a total number of Eligible Seasons (e.g., 3.5 Eligible Seasons).

(i) For the avoidance of any doubt, seasons in the World League of American Football, the NFL Europe League, or the NFL Europa League are specifically excluded from the calculation of an Eligible Season.

(d) If the Retired NFL Football Player receives a Qualifying Diagnosis prior to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, then the 75% Offset for medically diagnosed Stroke or medically diagnosed Traumatic Brain Injury will not apply. If the Retired NFL Football Player receives a Qualifying Diagnosis subsequent to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, and if the Settlement Class Member demonstrates, by clear and convincing evidence, that the Qualifying Diagnosis was not causally related to the Stroke or the Traumatic Brain Injury, then the 75% Offset will not apply.

(e) Multiple Offsets will be applied individually and in a serial manner to any Monetary Award or Supplemental Monetary Award. For example, if the Monetary Award before the application of Offsets is \$1,000,000, and two 10% Offsets apply, there will be a 19% aggregate downward adjustment of the award (*i.e.*, application of the first Offset will reduce the award by 10%, or \$100,000, to \$900,000, and application of the second Offset will reduce the award by an additional 10%, or \$90,000, to \$810,000).

Section 6.6 Supplemental Monetary Awards. If, during the term of the Monetary Award Fund, a Retired NFL Football Player who has received a Monetary Award based on a certain Qualifying Diagnosis subsequently is diagnosed with a different Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) may be entitled to a Supplemental Monetary Award. If the Monetary Award level in the Monetary Award Grid (“Grid Level”) for the subsequent Qualifying Diagnosis is greater than the Grid Level for the earlier Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) will be entitled to a payment that is equal to the Grid Level for the subsequent Qualifying Diagnosis, after application of all applicable Offsets, minus the Grid Level for the earlier Qualifying Diagnosis, after application of all applicable Offsets, but prior to any

deductions for the satisfaction of Liens. In other words, any amounts deducted from the earlier Monetary Award to satisfy Liens will not be considered in the calculation of the Supplemental Monetary Award, which may also require an amount deducted to satisfy any subsequent Liens. (By way of example only, a Retired NFL Football Player who receives a Monetary Award for Level 1.5 Neurocognitive Impairment that is \$1,000,000 after application of all Offsets, which is then reduced by \$20,000 to \$980,000 to satisfy a Lien, and who later receives a Qualifying Diagnosis for Level 2 Neurocognitive Impairment that would pay \$1,200,000 after application of all Offsets, where there are no additional Liens, shall be entitled to a Supplemental Monetary Award of \$200,000.)

Section 6.7 Inflation Adjustment. Monetary Award amounts set forth in Exhibit 3 will be subject to an annual inflation adjustment, beginning one year after the Effective Date, not to exceed two and a half percent (2.5%), the precise amount subject to the sound judgment of the Special Master (or the Claims Administrator after expiration of the term of the Special Master).

Section 6.8 Monetary Award Fund Term. The Monetary Award Fund will commence on the Effective Date and will end sixty-five (65) years after the Effective Date.

ARTICLE VII Derivative Claimant Awards

Section 7.1 All Settlement Class Members who are Derivative Claimants seeking Derivative Claimant Awards must do so through the submission of Derivative Claim Packages containing all required proof, as set forth in Section 8.2(b).

Section 7.2 Eligibility. A Settlement Class Member who is a Derivative Claimant is entitled to a Derivative Claimant Award if, and only if: (a) the Derivative Claimant timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (b) the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) has received a Monetary Award; (c) the Settlement Class Member timely submits a Derivative Claim Package, subject to the terms and conditions set forth in ARTICLE VIII; and (d) the Claims Administrator determines, based on a review of the records provided in the Derivative Claim Package and applicable state law, that the Derivative Claimant has a relationship with the subject Retired NFL Football Player that properly and legally provides the right under applicable state law to sue independently and derivatively.

Section 7.3 Determination of Derivative Claimant Awards. Settlement Class Members who the Claims Administrator determines are entitled to Derivative Claimant Awards will be compensated from the Monetary Award of the Retired NFL Football Player through whom the relationship is the basis of the claim (or his Representative Claimant), and from any Supplemental Monetary Award, in the amount of one percent (1%) of that Monetary Award and any Supplemental Monetary Award. If

there are multiple Derivative Claimants asserting valid claims based on the same subject Retired NFL Football Player, the Claims Administrator will divide and distribute the Derivative Claimant Award among those Derivative Claimants pursuant to the laws of the domicile of the Retired NFL Football Player (or his Representative Claimant, if any).

ARTICLE VIII

Submission and Review of Claim Packages and Derivative Claim Packages

Section 8.1 All Settlement Class Members applying for Monetary Awards or Derivative Claimant Awards must submit Claim Packages or Derivative Claim Packages to the Claims Administrator.

Section 8.2 Content

(a) The content of Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Claim Form with the Personal Signature of the Retired NFL Football Player (or Representative Claimant) either on the Claim Form or on an acknowledgement form verifying the contents of the Claim Form; (ii) a Diagnosing Physician Certification; (iii) medical records reflecting the Qualifying Diagnosis; (iv) a HIPAA-compliant authorization form; and (v) records in the possession, custody or control of the Settlement Class Member demonstrating employment and participation in NFL Football.

(i) Representative Claimants of Retired NFL Football Players who died prior to the Effective Date do not need to include a Diagnosing Physician Certification in the Claim Package if the physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, also died prior to the Effective Date or was deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date. Instead, the Representative Claimant must provide evidence of that physician's death, incapacity or incompetence and of the qualifications of the diagnosing physician. For the avoidance of any doubt, all other content of Claim Packages must be submitted, including medical records reflecting the Qualifying Diagnosis.

(ii) In cases where a Retired NFL Football Player has received a Qualifying Diagnosis and the diagnosing physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, has died or has been deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date, or otherwise prior to completing a Diagnosing Physician Certification, the Retired NFL Football Player (or his Representative Claimant, if applicable) may obtain a Diagnosing Physician Certification from a separate qualified physician for the Qualifying Diagnosis as specified in Exhibit 1 based on an independent examination by the qualified physician and a review of the Retired NFL Football Player's medical records that formed the basis of the Qualifying Diagnosis by the deceased or legally incapacitated or incompetent physician. If the same Qualifying Diagnosis is found by both doctors, the date of

Qualifying Diagnosis used to calculate Monetary Awards shall be the date of the earlier Qualifying Diagnosis.

(b) The content of Derivative Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Derivative Claim Form with the Personal Signature of the Derivative Claimant either on the Derivative Claim Form or on an acknowledgement form verifying the contents of the Derivative Claim Form; and (ii) records sufficient to verify the relationship with the subject Retired NFL Football Player or deceased Retired NFL Football Player that properly and legally provides the Derivative Claimant the right under applicable state law to sue independently and derivatively.

(c) All statements made in Claim Forms, Derivative Claim Forms, any acknowledgement forms, and Diagnosing Physician Certifications will be sworn statements under penalty of perjury.

(d) Each Settlement Class Member has the obligation to submit to the Claims Administrator all of the documents required in Sections 8.1 and 8.2 to receive a Monetary Award or Derivative Claimant Award.

Section 8.3 Submission

(a) Settlement Class Members must submit Claim Packages and Derivative Claim Packages to the Claims Administrator in accordance with Section 30.15.

(i) Claim Packages must be submitted to the Claims Administrator no later than two (2) years after the date of the Qualifying Diagnosis or within two (2) years of the Effective Date, whichever is later. Failure to comply with this two (2) year time limitation will preclude a Monetary Award for that Qualifying Diagnosis, unless the Settlement Class Member can show substantial hardship that extends beyond the Retired NFL Football Player's Qualifying Diagnosis and that precluded the Settlement Class Member from complying with the two (2) year deadline, and submits the Claim Package within four (4) years after the date of the Qualifying Diagnosis or of the Effective Date, whichever is later.

(ii) Derivative Claim Packages must be submitted to the Claims Administrator no later than thirty (30) days after the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) receives a Notice of Monetary Award Claim Determination that provides a determination that the Retired NFL Football Player (or his Representative Claimant) is entitled to a Monetary Award. Failure to comply with this time limitation will preclude a Derivative Claimant Award based on that Monetary Award.

(b) Each Settlement Class Member will promptly notify the Claims Administrator of any changes or updates to the information the Settlement Class

Member has provided in the Claim Package or Derivative Claim Package, including any change in mailing address.

(c) All information submitted by Settlement Class Members to the Claims Administrator will be recorded in a computerized database that will be maintained and secured in accordance with all applicable federal, state and local laws, regulations and guidelines, including, without limitation, HIPAA. The Claims Administrator must ensure that information is recorded and used properly, that an orderly system of data management and maintenance is adopted, and that the information is retained under responsible custody. The Claims Administrator will keep the database in a form that grants access for claims administration use, but otherwise restricts access rights, including to employees of the Claims Administrator who are not working on claims administration for the Class Action Settlement.

(i) The Claims Administrator and Lien Resolution Administrator, and their respective agents, representatives, and professionals who are administering the Class Action Settlement, will have access to all information submitted by Settlement Class Members to the Claims Administrator and/or Lien Resolution Administrator necessary to perform their responsibilities under the Settlement Agreement.

(ii) All information submitted by Settlement Class Members to the Claims Administrator will be treated as confidential, as set forth in Section 17.2.

Section 8.4 Preliminary Review

(a) Within forty-five (45) days of the date on which the Claims Administrator receives a Claim Package or Derivative Claim Package from a Settlement Class Member, the Claims Administrator will determine the sufficiency and completeness of the required contents, as set forth in Section 8.2. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) The Claims Administrator will reject a claim submitted by a Settlement Class Member, subject to the cure provisions of Section 8.5, if the Claims Administrator has not received all required content.

Section 8.5 Deficiencies and Cure. For rejected Claim Packages or Derivative Claim Packages, the Claims Administrator will send a Notice of Deficiency to the Settlement Class Member, which Notice will contain a brief explanation of the Deficiency(ies) giving rise to rejection of the Claim Package or Derivative Claim Package, and will, where necessary, request additional information and/or documentation. The Claims Administrator will make available to the Settlement Class Member through a secure online web interface any document(s) with a Deficiency

needing correction or, upon request from the Settlement Class Member, will mail the Settlement Class Member a copy of such document(s). The Notice of Deficiency will be sent no later than forty-five (45) days from the date of receipt of the Claim Package or Derivative Claim Package by the Claims Administrator. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). The Notice of Deficiency will contain a recommendation for how, if possible, the Settlement Class Member can cure the Deficiency, and will provide a reasonable deadline not less than 120 days (from the date the Notice of Deficiency is sent to the Settlement Class Member) for the Settlement Class Member to submit Deficiency cure materials. Within that time period, the Settlement Class Member will have the opportunity to cure all Deficiencies and provide any requested additional information or documentation, except that the failure to submit timely a Claim Package or Derivative Claim Package in accordance with the terms of this Settlement Agreement cannot be cured other than upon a showing of substantial hardship as set forth in Section 8.3(a)(i). Any Claim Package or Derivative Claim Package that continues to suffer from a Deficiency identified on the Notice of Deficiency following the submission of documentation intended to cure the Deficiency will be denied by the Claims Administrator.

Section 8.6 Verification and Investigation

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will authorize the Claims Administrator and/or Lien Resolution Administrator, as applicable, consistent with HIPAA and other applicable privacy laws, to verify facts and details of any aspect of the Claim Package or Derivative Claim Package and/or the existence and amounts, if any, of any Liens. The Claims Administrator or Lien Resolution Administrator, at its sole discretion, may request additional documentation, which each Settlement Class Member agrees to provide in order to claim a Monetary Award or Derivative Claimant Award.

(b) The Claims Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim Package or Derivative Claim Package documentation, including, without limitation, as set forth in Section 10.3.

ARTICLE IX Notice of Claim Determinations, Payments, and Appeals

Section 9.1 Monetary Award Determination. Based upon its review of the Claim Package, and the results of any investigations of the Settlement Class Member's claim, the Claims Administrator will determine whether a Settlement Class Member qualifies for a Monetary Award and the amount of any such Award. In order to decide whether a Settlement Class Member is entitled to a Monetary Award, and at what level, the Claims Administrator will determine whether the Retired NFL Football Player or deceased Retired NFL Football Player has a Qualifying Diagnosis according to the Diagnosing Physician Certification, including consideration of, without limitation, the

qualifications of the diagnosing physician, or in the case of a deceased Retired NFL Football Player diagnosed by a deceased physician, as set forth in Section 8.2(a)(i), according to the supporting medical records. If the Claims Administrator determines that there is a Qualifying Diagnosis, it will determine the level of Monetary Award based on the Monetary Award Grid (attached as Exhibit 3) and a review of the Diagnosing Physician Certification for the age at the time of the Qualifying Diagnosis, and will review the Claim Package, including the Claim Form and medical records reflecting the Qualifying Diagnosis, for information relating to all other Offsets, and must apply all applicable Offsets to the Monetary Award. For the avoidance of any doubt, the Claims Administrator has no discretion to make a Monetary Award determination other than as set forth above.

(a) Evidence of NFL Employment and Participation. To the extent that the Claims Administrator determines that the Settlement Class Member has provided in the Claim Package insufficient evidence of the Retired NFL Football Player's NFL employment and participation to substantiate the claimed Eligible Seasons, the Claims Administrator will request that the NFL Parties and Member Clubs provide any employment or participation records of the Retired NFL Football Player in their reasonable possession, custody or control, which the NFL Parties and Member Clubs will provide in good faith. The Claims Administrator will consider all of the evidence provided to it by the Retired NFL Football Player and the NFL Parties and Member Clubs in determining the appropriate number of Eligible Seasons to apply to the Retired NFL Football Player's claim. The Claims Administrator shall credit only the Eligible Seasons substantiated by the overall evidence. To the extent there is no documentary evidence regarding an Eligible Season claimed by the Retired NFL Football Player beyond his sworn statement, the Claims Administrator will take into account the reasons offered by the Retired NFL Football Player for the lack of such documentation in arriving at its final decision.

(b) Timing of Monetary Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Monetary Award Claim Determination to the Settlement Class Member and the NFL Parties no later than sixty (60) days from the later of: (i) the date when a completed Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date, if any, when all Deficiencies with a Settlement Class Member's Claim Package have been deemed cured by the Claims Administrator; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely provided to the Claims Administrator; or (iv) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(c) Notice Content

(i) Notices of Monetary Award Claim Determinations that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An adverse Notice of Monetary Award Claim Determination does not preclude a Settlement Class Member from submitting a Claim Package in the future for a Monetary Award should the Retired NFL Football Player's medical condition change. The Claims Administrator shall develop reasonable procedures and rules to ensure the right of Settlement Class Members to submit a Claim Package for the same or different Qualifying Diagnoses in the future, while preventing unwarranted repetitive claims that do not disclose materially changed circumstances from prior claims made by the Settlement Class Member.

(ii) Notices of Monetary Award Claim Determinations that provide a determination that the Settlement Class Member is entitled to a Monetary Award will provide: (a) the net amount of that Monetary Award after application of Offsets; (b) a listing of the Offsets applied to that Monetary Award; (c) the Lien Resolution Administrator's determination of any amount deducted from the Monetary Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award under which identified Liens shall be resolved, as set forth in ARTICLE XI; (d) information regarding how the Settlement Class Member can appeal the Monetary Award determination, as set forth in Section 9.7; and (e) information regarding the timing of payment, as set forth in Section 9.3.

(d) NFL Parties' and Co-Lead Class Counsel's Review of Claim Package. If a Notice of Monetary Award Determination provides a determination that the Settlement Class Member is entitled to a Monetary Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.2 Derivative Claimant Award Determination. Based upon its review of the Derivative Claim Package, and the results of any investigations of the Derivative Claimant's claim, the Claims Administrator will determine whether a Derivative Claimant qualifies for a Derivative Claimant Award, as set forth in Section 7.3.

(a) Timing of Derivative Claimant Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Derivative Claimant Award Determination to the Settlement Class Member and the NFL Parties no later than thirty (30) days from the later of: (i) the date when a completed Derivative Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date when all Deficiencies with a Settlement Class Member's Derivative Claim Package have been determined by the Claims Administrator to be satisfactorily cured; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely

provided to the Claims Administrator; or (iv) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) Notice Content

(i) Notices of Derivative Claimant Award

Determinations that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An adverse Notice of Derivative Claimant Award Determination does not preclude a Derivative Claimant from submitting a Derivative Claim Package in the future for a Derivative Claimant Award should the Retired NFL Football Player receive a Supplemental Monetary Award or succeed on an appeal of a previously denied claim for a Monetary Award.

(ii) Notices of Derivative Claimant Award

Determinations that provide a determination that the Settlement Class Member is entitled to a Derivative Claimant Award will provide: (a) the amount of that Derivative Claimant Award; (b) the Lien Resolution Administrator's determination of any amount deducted from the Derivative Claimant Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Derivative Claimant Award under which identified Liens will be resolved, as set forth in ARTICLE XI; (c) information regarding how the Derivative Claimant can appeal the Derivative Claimant Award determination, as set forth in Section 9.7; and (d) information regarding the timing of payment, as set forth in Section 9.4.

(c) NFL Parties' and Co-Lead Class Counsel's Review of Derivative Claim Package. If a Notice of Derivative Claimant Award Determination provides a determination that the Settlement Class Member is entitled to a Derivative Claimant Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.3 Remuneration and Payment of Monetary Awards.

(a) The Claims Administrator will promptly pay any Monetary Awards to Settlement Class Members who qualify under the terms of the Monetary Award Grid and all applicable Offsets after the Claims Administrator sends a Notice of Monetary Award Claim Determination; provided, however, any such payment will not occur until after the completion of the processes for (i) appealing Monetary Award determinations, as set forth in Section 9.7; (ii) auditing claims and investigating claims for fraud, as set forth in Section 10.3; (iii) identifying and satisfying Liens, as set forth in

ARTICLE XI; and (iv) determining if any Derivative Claimants have filed timely, and are entitled to, Derivative Claimant Awards based on their relationship with the subject Retired NFL Football Player.

(b) In connection with a Monetary Award issued to a Representative Claimant, the Claims Administrator will abide by all substantive laws of the domicile of such Representative Claimant concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process applicable to such Representative Claimant. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

(c) Upon the completion of the Monetary Award Fund term, as set forth in Section 6.8, the Court shall determine the proper disposition of any funds remaining in the Monetary Award Fund consistent with the purpose of this Settlement, including to promote safety and injury prevention with respect to football players and/or the treatment or prevention of traumatic brain injuries.

Section 9.4 Remuneration and Payment of Derivative Claimant Awards

(a) The Claims Administrator will promptly pay any Derivative Claimant Awards to Settlement Class Members who qualify; provided, however, any such payment will not occur until after expiration or completion of: (i) the time period for Derivative Claimants to file Derivative Claim Packages, as set forth in Section 8.3(a)(ii), has expired; (ii) the process for appealing Derivative Claimant Awards, including appeals by any other Derivative Claimants asserting claims based on the same Retired NFL Football Player, as set forth in Section 9.7; (iii) the process for auditing claims and investigating claims for fraud, set forth in Section 10.3; and (iv) the process for identifying and satisfying Liens, as set forth in ARTICLE XI.

(b) In paying a Derivative Claimant Award to a minor, the Claims Administrator will abide by all substantive laws of the domicile of such Settlement Class Member concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process applicable to such Settlement Class Members. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

Section 9.5 Scope of Appeals. The Claims Administrator's determination as to whether a Settlement Class Member is entitled to a Monetary Award or Derivative Claimant Award under this Settlement Agreement, and/or the calculation of the Monetary Award or Derivative Claimant Award, is appealable by the Settlement Class Member, Co-Lead Class Counsel, or the NFL Parties based on their respective good faith belief that the determination by the Claims Administrator was incorrect.

Section 9.6 Appellant Fees and Limitations

(a) Any Settlement Class Member taking an appeal will be charged a fee of One Thousand United States dollars (U.S. \$1,000) by the Claims Administrator that must be paid before the appeal may proceed, which fee will be refunded if the Settlement Class Member's appeal is successful. If the appeal is unsuccessful, the fee will be paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(b) The NFL Parties may appeal up to ten (10) Monetary Award or Derivative Claimant Award determinations per calendar year, provided that, upon application by the NFL Parties, the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may permit the NFL Parties to take additional appeals in a calendar year on the basis of good cause. If the NFL Parties' appeal is unsuccessful, they will pay all administrative costs directly resulting from the appeal, and reasonable attorneys' fees, if any, incurred by the Settlement Class Member as a direct result of the appeal (collectively, "Appeal Costs"), provided that in no event will the NFL Parties be required to pay Appeal Costs in an amount greater than Two Thousand United States dollars (U.S. \$2,000).

(i) If the NFL Parties' appeal is unsuccessful, and the Appeal Costs exceed Two Thousand United States dollars (U.S. \$2,000), the NFL Parties' payment of Two Thousand United States dollars (U.S. \$2,000) will be divided pro-rata between the reimbursement of administrative costs and the reasonable attorneys' fees, if any, so long as each respective payment does not exceed the actual amount of such administrative costs or reasonable attorneys' fees.

(ii) The NFL Parties' payment of administrative costs hereunder will be made to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(c) Co-Lead Class Counsel may appeal up to ten (10) Monetary Award or Derivative Claimant Award determinations per calendar year on the basis of good cause.

Section 9.7 Submissions on Appeals

(a) The appellant must submit to the Court his or her notice of appeal, using an Appeals Form to be agreed upon by Co-Lead Class Counsel and the NFL Parties and provided by the Claims Administrator, with written copy to the appellee(s) Settlement Class Member or the NFL Parties (as applicable), and to the

Claims Administrator, no later than thirty (30) days after receipt of a Notice of Monetary Award Claim Determination or Notice of Derivative Claimant Award Determination. Appellants must present evidence in support of their appeal, and any written statements may not exceed five (5) single-spaced pages in length.

(b) The appellee(s) may submit a written opposition to the appeal no later than thirty (30) days after receipt of the Appeals Form. This written opposition must not exceed five (5) single-spaced pages in length. The Court will not deem the lack of an opposition to be an admission regarding the merits of the appeal. The appellant may not submit a reply.

Section 9.8 Review and Decision. The Court will make a determination based upon a showing by the appellant of clear and convincing evidence. The Court may be assisted, in its discretion, by any member of the Appeals Advisory Panel. The decision of the Court will be final and binding.

(a) Appeals Advisory Panel

(i) Within ninety (90) days after the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to, and jointly recommend to the Court for appointment, the members of the Appeals Advisory Panel. Under no circumstances may a member of the Appeals Advisory Panel have been convicted of a crime of dishonesty, or have been retained as an expert consultant or expert witness by one of the parties or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint.

(ii) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly retain the members of the Appeals Advisory Panel appointed by the Court.

(iii) Upon request of the Court or the Special Master, the Appeals Advisory Panel will take all steps necessary to provide sound advice with respect to medical aspects of the Class Action Settlement.

(iv) The Court will oversee the Appeals Advisory Panel, and may, in its discretion, request reports or information from the Appeals Advisory Panel.

(v) Compensation of the Appeals Advisory Panel, at a reasonable rate for their time agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, will be paid out of the Monetary Award Fund, except that compensation of an Appeals Advisory Panel member will be paid out of the BAP fund for reviewing and advising the Court whether a Retired NFL Football player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, in cases where there are conflicting diagnoses by Qualified BAP Providers.

(vi) Members of the Appeals Advisory Panel may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL

Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If any member of the Appeals Advisory Panel resigns, dies, is replaced, or is otherwise unable to continue in his or her position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed member for appointment by the Court.

(b) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between members of the Appeals Advisory Panel, on the one hand, and an appellant or appellee(s), on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

ARTICLE X **Class Action Settlement Administration**

Section 10.1 Special Master

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint a Special Master pursuant to Federal Rule of Civil Procedure 53.

(ii) It is the intention of the Parties that the Special Master will perform his or her responsibilities and take all steps necessary to faithfully oversee the implementation and administration of the Settlement Agreement for a term of five (5) years commencing on the Effective Date. The term of the Special Master may be extended by the Court.

(iii) The Special Master will maintain at all times appropriate and sufficient bonding insurance in connection with his or her performance of responsibilities under the Settlement Agreement. The cost for this insurance will be paid out of the Monetary Award Fund.

(iv) The Court may, at its sole discretion, request reports or information from the Special Master. The Special Master will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs. The Claims Administrator may assist with such reports if requested by the Special Master.

(v) Following the five (5) year term of the Special Master, and any extension(s) thereof, oversight of the administration of the Class Action Settlement will revert to the Court.

(b) Roles and Responsibilities

(i) The Special Master will, among other responsibilities set forth in this Settlement Agreement:

(1) Provide reports or information that the Court may, at its sole discretion, request from the Special Master. The Special Master will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(2) Oversee complaints raised by Co-Lead Class Counsel, Counsel for the NFL Parties, the BAP Administrator, Claims Administrator and/or the Lien Resolution Administrator regarding aspects of the Class Action Settlement;

(3) Hear appeals of registration determinations, if requested by the Court, as set forth in Section 4.3(a)(iv).

(4) Oversee the BAP Administrator, Claims Administrator and Lien Resolution Administrator, as set forth in Section 5.6(a)(iv), Section 10.2(a)(iv), and Section 11.1(a)(iv), and receive monthly and annual reports from those Administrators; and

(5) Oversee fraud detection and prevention procedures, and review and decide the appropriate disposition of potentially fraudulent claims as further specified in Section 10.3(i).

(c) Compensation and Expenses. Annual compensation of the Special Master will not exceed Two Hundred Thousand United States dollars (U.S. \$200,000). Such annual compensation will be shared equally by the NFL Parties and the Monetary Award Fund for the five (5) year term and any extensions thereof. The reasonable out-of-pocket costs and expenses of the Special Master directly incurred as a result of the performance of his or her responsibilities will be paid out of the Monetary Award Fund. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Special Master's out-of-pocket costs and expenses, in which case the Court will determine the reasonableness of such costs and expenses. If the Court determines that any costs and expenses are unreasonable, the Special Master will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Special Master will refund that amount to the Monetary Award Fund.

(d) Replacement. The Court, in its discretion, can replace the Special Master for good cause. If the Special Master resigns, dies, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties may file a motion for the appointment by the Court of a new Special Master.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Special Master, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), Co-Lead Class Counsel, Class Counsel, Subclass Counsel, the NFL Parties, Counsel for the NFL Parties, the BAP Administrator, the Claims Administrator, or the Lien Resolution Administrator, on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Court, may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

Section 10.2 Claims Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint BrownGreer PLC as Claims Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Claims Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the Claims Administrator will provide that the Claims Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Settlement Agreement, and will require that the Claims Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Claims Administrator. The Claims Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Claims Administrator, and may, at his or her sole discretion, request reports or information from the Claims Administrator.

(v) Beyond the reporting requirements set forth in Section 10.2(a)(iii)-(iv), beginning one month after the Effective Date, the Claims Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the Monetary Award Fund, and thereafter on a quarterly basis or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and the NFL Parties, regarding the status and progress of claims administration. The monthly (or quarterly) report will include,

without limitation: (a) the monthly and total number of Settlement Class Members who registered timely, and the biographical information for each Settlement Class Member who registered timely in the preceding month, as set forth in Section 4.2(c); (b) the identity of each Settlement Class Member who submitted a Claim Package or Derivative Claim Package in the preceding month, the review status of such package (e.g., under preliminary review, subject to a Notice of Deficiency, subject to verification and investigation, received a Notice of Claim Determination), and the monthly and total number of Settlement Class Member claims for Monetary Awards and Derivative Claimant Awards; (c) the monthly and total number of Monetary Awards and Derivative Claimant Awards paid; (d) the monthly and total number of each Qualifying Diagnosis for which a Monetary Award has been paid; (e) the monthly and total number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (f) the monthly identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant Awards; (g) the monthly expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; and (h) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the Claims Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Settlement Class Members, broken down by Qualifying Diagnosis, who received Monetary Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Monetary Awards; (b) the number of Settlement Class Members who received Derivative Claimant Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Derivative Claimant Awards; (c) the monetary amounts paid through Monetary Awards and Derivative Claimant Awards, including the monetary amounts over the term of the Class Action Settlement; (d) the number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (e) the identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant Awards; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; (g) the projected expenses/administrative costs for the remainder of the Monetary Award Fund term; (h) the monies remaining in the Monetary Award Fund; and (i) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vii) The NFL Parties may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of

the Claims Administrator, and the Claims Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time during the term of the Monetary Award Fund. Complete copies of the audit findings report will be provided to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties.

(b) Roles and Responsibilities

(i) The Claims Administrator will, among other responsibilities set forth in this Settlement Agreement:

(1) Maintain the Settlement Website, as set forth in Section 4.1(a);

(2) Maintain an automated telephone system to provide information about the Class Action Settlement, as set forth in Section 4.1(b);

(3) Establish and administer both online and hard copy registration methods, as set forth in Section 4.2(a);

(4) Review a purported Settlement Class Member's registration and determine its validity, as set forth in Section 4.3;

(5) Process and review Claim Packages and Derivative Claim Packages, as set forth in ARTICLE VIII;

(6) Determine whether Settlement Class Members who submit Claim Packages and Derivative Claim Packages are entitled to Monetary Awards or Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII;

(7) Audit Claim Packages and Derivative Claim Packages, and establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund, as set forth in Section 10.3; and

(8) Perform such other tasks reasonably necessary to accomplish the goals contemplated by this Settlement Agreement, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties.

(c) Compensation and Expenses. Reasonable compensation of the Claims Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Claims Administrator's responsibilities set forth in this Settlement Agreement will be paid out of the Monetary Award Fund. The Claims Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Claims Administrator's out-of-pocket costs and expenses, in which case the Court will determine

(or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the Claims Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Claims Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Claims Administrator.

(e) Replacement. The Claims Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Claims Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend a new proposed Claims Administrator for appointment by the Court.

(f) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Claims Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Claims Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members and their counsel (if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Claims Administrator regularly provides settlement claims administration and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that it shall not be a conflict of interest for the Claims Administrator to provide such services to such individuals or to receive compensation for such work.

Section 10.3 Audit Rights and Detection and Prevention of Fraud

(a) Co-Lead Class Counsel and Counsel for the NFL Parties each will have the absolute right and discretion, at any time, but at its sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Award and Derivative Claimant Award claims submitted by Settlement Class Members.

(b) In addition, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator will establish and implement procedures to detect

and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund. Among other fraud detection and prevention procedures, the Claims Administrator, with the approval of Co-Lead Class Counsel and Counsel for the NFL Parties, will institute the following procedures relating to claim audits:

(i) A Settlement Class Member whose claim has been selected for audit by the Claims Administrator, Co-Lead Class Counsel or Counsel for the NFL Parties may be required to submit additional records, including medical records, and information as requested by the party auditing the claim; and

(ii) A Settlement Class Member who refuses to cooperate with an audit, including by unreasonably failing or refusing to provide the auditing party with all records and information sought within the time frame specified, will have the claim denied by the Claims Administrator, without right to an appeal.

(c) On a monthly basis, the Claims Administrator will audit five percent (5%) of the total Claim Packages and Derivative Claim Packages that the Claims Administrator has found to qualify for Monetary Awards or Derivative Claimant Award during the preceding month. The Claims Administrator will select such Claim Packages and Derivative Claim Packages for auditing on a random basis or to address a specific concern raised by a Claim Package or Derivative Claim Package, but will audit at least one Claim Package, if any qualify, each month.

(d) In addition, the Claims Administrator will audit Claim Packages that: (i) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player took part in the BAP within the prior 365 days and was not diagnosed with that Qualifying Diagnosis during the BAP baseline assessment examination; (ii) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player submitted a different Claim Package within the prior 365 days based upon a diagnosis of that same Qualifying Diagnosis by a different physician, and that Claim Package was found not to qualify for a Monetary Award; and (iii) reflect a Qualifying Diagnosis made through a medical examination conducted at a location other than a standard treatment or diagnosis setting (e.g., hotel rooms).

(e) Upon selection of a Settlement Class Member's Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include the following records and information:

(i) All of the Retired NFL Football Player's medical records in the Settlement Class Member's possession, custody, or control that relate to the underlying medical condition that is the basis for the Qualifying Diagnosis claimed by the Settlement Class Member;

(ii) A list of all health care providers seen by the Retired NFL Football Player in the last five (5) years;

(iii) The Settlement Class Member's (or subject Retired NFL Football Player's) employment records from Member Clubs or other NFL Football employers, but only to the extent that the Settlement Class Member is authorized under applicable state law or Collective Bargaining Agreement to request and receive such records from the Member Club or other NFL Football employer;

(iv) Such other relevant documents or information within the Settlement Class Member's possession, custody, or control as may reasonably be requested by the Claims Administrator under the circumstances, including, if necessary, authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) created or obtained by any health care providers seen by the Settlement Class Member (or subject Retired NFL Football Player) in the last five (5) years; and

(v) Where the audit is conducted because of the circumstances set forth in Section 10.3(d), authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) held by the primary care physician of the Retired NFL Football Player and the medical records of all other physicians or neuropsychologists who have examined the Retired NFL Football Player relating to the Qualifying Diagnosis.

(f) Upon selection of a Settlement Class Member's Derivative Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include relevant documents or information within the Settlement Class Member's possession, custody, or control as may reasonably be requested by the Claims Administrator under the circumstances.

(g) When auditing a Settlement Class Member's claim for a Monetary Award or Derivative Claimant Award, the Claims Administrator will review the records and information relating to that claim and determine whether the Claim Form or Derivative Claim Form misrepresents, omits, and/or conceals material facts that affect the claim.

(h) If, upon completion of an audit, the Claims Administrator determines that there has not been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the process of issuing a Monetary Award or Derivative Claimant Award, subject to appeal, will proceed.

(i) If, upon completion of an audit, the Claims Administrator determines that there has been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the Claims Administrator will notify the Settlement Class Member and will refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings. The Special Master's review and findings shall take into account whether the misrepresentation, omission or concealment was intentional, and may include the following relief, without limitation: (a) denial of the claim in the event of fraud; (b) additional audits of claims from the same law firm or physician (if applicable), including those already paid; (c) referral of the attorney or physician (if applicable) to the appropriate disciplinary boards; (d) referral to federal authorities; (e) disqualification of the attorney, physician and/or Settlement Class Member from further participation in the Class Action Settlement; and/or (f) if a law firm is found by the Claims Administrator to have submitted more than one fraudulent submission on behalf of Settlement Class Members, claim submissions by that law firm will no longer be accepted, and attorneys' fees paid to the firm by the Settlement Class Member will be forfeited and paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(j) In addition, if the Claims Administrator at any time makes a finding (based on its own detection processes or from information received from Co-Lead Class Counsel or Counsel for the NFL Parties) of fraud by a Settlement Class Member submitting a claim for a Monetary Award or Derivative Claimant Award, and/or by the physician providing the Qualifying Diagnosis, including, without limitation, misrepresentations, omissions, or concealment of material facts relating to the claim, the Claims Administrator will notify the Settlement Class Member and will make a recommendation to Co-Lead Class Counsel and Counsel for the NFL Parties to refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings that may include, without limitation, those set forth in Section 10.3(i).

(i) If both Co-Lead Class Counsel and Counsel for the NFL Parties do not agree with the Claims Administrator's recommendation to refer a claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), they will notify the Claims Administrator, who will continue with the processing of the claim.

Section 10.4 The Claims Administrator will also establish system-wide processes to detect and prevent fraud, including, without limitation, claims processing quality training and review and data analytics to spot "red flags" of fraud, including, without limitation, alteration of documents, questionable signatures, duplicative documents submitted on claims, the number of claims from similar addresses or supported by the same physician or office of physicians, data metrics indicating patterns of fraudulent submissions, and such other attributes of claim submissions that create a reasonable suspicion of fraud.

ARTICLE XI Identification and Satisfaction of Liens

Section 11.1 Lien Resolution Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Co-Lead Class Counsel, Class Counsel and Subclass Counsel will request that the Court appoint Garretson Group as Lien Resolution Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Lien Resolution Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the Lien Resolution Administrator will provide that the Lien Resolution Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Lien-related provisions of the Settlement Agreement, and will require that the Lien Resolution Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Lien Resolution Administrator. The Lien Resolution Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Lien Resolution Administrator, and may, at his or her sole discretion, request reports or information from the Lien Resolution Administrator.

(b) Roles and Responsibilities. The Lien Resolution Administrator will, among other responsibilities set forth in this Settlement Agreement, administer the process for the identification and satisfaction of all applicable Liens, as set forth in Section 11.3. Each Settlement Class Member (and his or her respective counsel, if applicable) claiming a Monetary Award or Derivative Claimant Award, however, will be solely responsible for the satisfaction and discharge of all Liens.

(c) Compensation and Expenses. Reasonable compensation of the Lien Resolution Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Lien Resolution Administrator's responsibilities will be paid out of the Monetary Award Fund, unless otherwise specified herein. The Lien Resolution Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Lien Resolution Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable determines that any costs and expenses are unreasonable,

the Lien Resolution Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Lien Resolution Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Lien Resolution Administrator.

(e) Replacement. The Lien Resolution Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Lien Resolution Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Lien Resolution Administrator for appointment by the Court.

Section 11.2 Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Lien Resolution Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Lien Resolution Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Lien Resolution Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Lien Resolution Administrator regularly provides lien resolution and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that it shall not be a conflict of interest for the Lien Resolution Administrator to provide such services to such individuals or to receive compensation for such work.

Section 11.3 Lien Identification, Satisfaction and Discharge

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award in his or her Claim Form or Derivative Claim Form.

(b) Each Settlement Class Member (and counsel individually representing him or her, if any) shall cooperate with the Lien Resolution Administrator to identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D

Program sponsors with respect to any Monetary Award or Derivative Claimant Award as a prerequisite to receiving payment of any Monetary Award or Derivative Claimant Award, including by providing the requested information and authorizations to the Lien Resolution Administrator and/or Claims Administrator in the timeframe specified for so doing.

(c) Among other things, each Settlement Class Member will authorize the Lien Resolution Administrator to:

(i) Establish procedures and protocols to identify and resolve Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award;

(ii) Undertake to obtain an agreement in writing and other supporting documentation with CMS promptly following the Effective Date that:

(1) Establishes a global repayment amount per Qualifying Diagnosis and/or for all or certain Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program, or, alternatively, otherwise sets forth a conditional payment resolution process. Such amounts will be based on the routine costs associated with the medically accepted standard of care for the treatment and management of each Qualifying Diagnosis. The agreement, in writing, and supporting documentation with CMS will demonstrate reasonable proof of satisfaction of Medicare's Part A and/or Part B fee-for-service recovery claim in connection with Settlement Class Member's (who are or were beneficiaries of the Medicare Program) receipt of any Monetary Award or Derivative Claimant Award and any benefits provided pursuant to this Settlement Agreement.

(2) Establishes reporting processes recognized by CMS as satisfying the reporting obligations, if any, under the mandatory Medicare reporting requirements of Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, 110 Pub. L. No. 173, 121 Stat. 2492 ("MMSEA") in connection with this Settlement Agreement.

(iii) Fulfill all state and federal reporting obligations, including those to CMS that are agreed upon with CMS;

(iv) Satisfy Lien amounts owed to a Governmental Payor or, to the extent identified by the Class Member pursuant to Section 11.3(a), Medicare Part C or Part D Program sponsor for medical items, services, and/or prescription drugs paid on behalf of Settlement Class Members out of any Monetary Award or Derivative Claimant Award to the Settlement Class Member pursuant to this Settlement Agreement; and

(v) Transmit all information received from any Governmental Payor or Medicare Part C or Part D Program sponsor pursuant to such authorizations (i) to the NFL Parties, Claims Administrator, and/or Special Master solely for purposes of verifying compliance with the MSP Laws or other similar reporting

obligations and for verifying satisfaction and full discharge of all such Liens, or (ii) as otherwise directed by the Court.

(d) If the Lien Resolution Administrator is unable to negotiate a global repayment amount for some or all of the Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program with CMS, as set forth in Section 11.3(c)(ii)(1), the Lien Resolution Administrator will put in place a mechanism for resolving these Liens on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. In addition, the Lien Resolution Administrator will put in place a mechanism for resolving Liens owed to other Governmental Payors or Medicare Part C or Part D Program sponsors on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. These mechanisms for resolving such Liens on an individual basis will allow the Lien Resolution Administrator to: (i) satisfy such Lien amounts owed for medical items, services, and/or prescription drugs paid on behalf of a Settlement Class Member out of any Monetary Award to the Settlement Class Member, subject to the Settlement Class Member's right to object to the fact and/or amount of such Lien amount; and (ii) provide that the Lien Resolution Administrator's reasonable costs and expenses incurred in resolving such Liens, including the reasonable compensation of the Lien Resolution Administrator for such efforts, will be paid out of any Monetary Award to the Settlement Class Member.

(e) The Parties further understand and agree that the Lien Resolution Administrator's performance of functions described in this Article is not intended to modify the legal and financial rights and obligations of Settlement Class Members, including the duty to pay and/or arrange for reimbursement of each Settlement Class Member's past, current, or future bills or costs, if any, for medical items, services, and/or prescription drugs, and to satisfy and discharge any and all statutory recovery obligations for any Liens.

(f) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, the Claims Administrator will not pay any Monetary Award to a Settlement Class Member who is or was entitled to benefits under a Governmental Payor program or Medicare Part C or Part D Program prior to: (i) the Lien Resolution Administrator's determination of the final amount needed to satisfy the reimbursement obligation that any Governmental Payor or Medicare Part C or Part D Program sponsor states is due and owing (as reflected in a final demand letter or other formal written communication), and satisfaction and discharge of that reimbursement obligation as evidenced by the Lien Resolution Administrator's receipt of a written satisfaction and discharge from the applicable Governmental Payor or Medicare Part C or Part D Program sponsor; or (ii) the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(g) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, if any person or entity claims any Liens, other than those set forth in Section 11.3(f), with respect to a Settlement Class Member's

Monetary Award or Derivative Claimant Award, then the Claims Administrator will not pay any such Monetary Award or Derivative Claimant Award if the Claims Administrator or Lien Resolution Administrator has received notice of that Lien and there is a legal obligation to withhold payment to the Settlement Class Member under applicable federal or state law. The Claims Administrator will hold such Monetary Award or Derivative Claimant Award in an escrow account until the Settlement Class Member (and counsel individually representing him or her, if any) presents documentary proof, such as a court order or release or notice of satisfaction by the party asserting the Lien, that such Lien has been satisfied and discharged; or until the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award, Supplemental Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(h) Settlement Class Members who are or were entitled to benefits under Medicare Part C or Part D Programs may be required by statute or otherwise, when making a claim for and/or receiving compensation pursuant to this Settlement Agreement, to notify the relevant Medicare Part C or Part D Program sponsor or others of the existence of, and that Settlement Class Member's participation in, this Class Action Settlement. It is the sole responsibility of each Settlement Class Member to determine whether he or she has such a notice obligation, and to perform timely any such notice reporting.

Section 11.4 Indemnification. Each Settlement Class Member, on his or her own behalf, and on behalf of his or her estate, predecessors, successors, assigns, representatives, heirs, beneficiaries, executors, and administrators, in return for the benefits and consideration provided in this Settlement Agreement, will indemnify and forever hold harmless, and pay all final judgments, damages, costs, expenses, fines, penalties, interest, multipliers, or liabilities, including the costs of defense and attorneys' fees of, the Released Parties against any and all claims by Other Parties arising from, relating to, or resulting from (a) any undisclosed Lien relating to, or resulting from, compensation or benefits received by a Settlement Class Member pursuant to this Class Action Settlement and/or (b) the failure of a Settlement Class Member timely and accurately to report or provide information that is necessary for compliance with the MSP Laws, or for the Lien Resolution Administrator to identify and/or satisfy all Governmental Payors or Medicare Part C or Part D Program sponsors who may hold or assert a reimbursement right. The amount of indemnification will not exceed the total Monetary Award or Derivative Claimant Award for that Settlement Class Member's claim. **CLASS AND SUBCLASS REPRESENTATIVES AND SETTLEMENT CLASS MEMBERS ACKNOWLEDGE THAT THIS SECTION COMPLIES WITH ANY REQUIREMENT TO EXPRESSLY STATE THAT LIABILITY FOR SUCH CLAIMS IS INDEMNIFIED AND THAT THIS SECTION IS CONSPICUOUS AND AFFORDS FAIR AND ADEQUATE NOTICE.**

Section 11.5 No Admission. Any reporting performed by the Lien Resolution Administrator and/or Claims Administrator for the purpose of resolving Liens, if any, related to compensation provided to Settlement Class Members pursuant to

this Settlement Agreement does not constitute an admission by any Settlement Class Member or any Released Party of any liability or evidence of liability in any manner.

Section 11.6 The foregoing provisions of this Article are solely for the several benefit of the NFL Parties, the Lien Resolution Administrator, the Special Master, and the Claims Administrator. No Settlement Class Member (or counsel individually representing them, if any) will have any rights or defenses based upon or arising out of any act or omission of the NFL Parties or any Administrator with respect to this Article.

ARTICLE XII Education Fund

Section 12.1 An Education Fund will be established to fund programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs and other educational initiatives benefitting Retired NFL Football Players.

The Court shall approve these education programs, with input from Co-Lead Class Counsel, Counsel for the NFL Parties and medical experts, as further set forth below. Co-Lead Class Counsel and Counsel for the NFL Parties will agree to a protocol through which Retired NFL Football Players will actively participate in such initiatives.

Section 12.2 Co-Lead Class Counsel, with input from Counsel for the NFL Parties, and with Court approval, will take all necessary steps to establish the Education Fund and establish procedures and controls to manage and account for the disbursement of funds to the education projects and all other costs associated with the Education Fund.

ARTICLE XIII Preliminary Approval and Class Certification

Section 13.1 Promptly after execution, Co-Lead Class Counsel, Class Counsel and Subclass Counsel will file the Motion for Preliminary Approval of the Class Action Settlement and the Settlement Agreement as an exhibit thereto. Simultaneously, the Class and Subclass Representatives will file a Motion for Certification of Rule 23(b)(3) Class and Subclasses for Purposes of Settlement.

Section 13.2 The Parties agree to take all actions reasonably necessary to obtain the Preliminary Approval and Class Certification Order from the Court.

Section 13.3 The Parties agree to jointly request that the Court stay this action, and enjoin all Settlement Class Members, unless and until they have been excluded from the Settlement Class by action of the Court, or until the Court denies approval of the Class Action Settlement (and such denial is affirmed by the Court of last resort), or until the Settlement Agreement is otherwise terminated, from filing, commencing, prosecuting, intervening in, participating in and/or maintaining, as plaintiffs, claimants, or class members in, any other lawsuit or administrative, regulatory,

arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances at issue, in the Class Action Complaint and/or the Released Claims, except that claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits will not be stayed or enjoined. For the avoidance of any doubt, the Parties are not requesting that the Court stay any actions against Riddell.

(a) The Parties recognize that there may be further pleadings, discovery responses, documents, testimony, or other matters or materials owed by the Parties to each other pursuant to existing pleading requirements, discovery requests, pretrial rules, procedures, orders, decisions, or otherwise. As of the Settlement Date, each Party expressly waives any right to receive, inspect, or hear such pleadings, discovery, testimony, or other matters or materials during the pendency of the settlement proceedings contemplated by this Settlement Agreement and subject to further order of the Court.

Section 13.4 The Parties agree that any certification of the Settlement Class and Subclasses will be for settlement purposes only. The Parties do not waive or concede any position or arguments they have for or against certification of any class for any other purpose in any action or proceeding. Any class certification order entered in connection with this Settlement Agreement will not constitute an admission by the NFL Parties, or finding or evidence, that the Class and Subclass Representatives' claims, or the claims of any other Settlement Class Member, or the claims of the Settlement Class, are appropriate for class treatment if the claims were contested in this or any other federal, state, arbitral, or foreign forum. If the Court enters the proposed form of Preliminary Approval and Class Certification Order, the Final Order and Judgment will provide for vacation of the Final Order and Judgment and the Preliminary Approval and Class Certification Order in the event that this Settlement Agreement does not become effective.

Section 13.5 Upon entry of the Preliminary Approval and Class Certification Order, the statutes of limitation applicable to any and all claims or causes of action that have been or could be asserted by or on behalf of any Settlement Class Members related to the subject matter of the Settlement Agreement will be tolled and stayed to the extent not already tolled by the initiation of an action in this litigation or a Related Lawsuit. The limitations period will not begin to run again for any Settlement Class Member unless and until he or she is deemed to have Opted Out of the Settlement Class or this Settlement Agreement is terminated pursuant to ARTICLE XVI. In the event the Settlement Agreement is terminated pursuant to ARTICLE XVI, to the extent not otherwise tolled, the limitations period for each Settlement Class Member as to whom the limitations period had not expired as of the date of the Preliminary Approval and Class Certification Order will extend for the longer of thirty (30) days from the last required issuance of notice of termination or the period otherwise remaining before expiration. Notwithstanding the tolling agreement herein, the Parties recognize that any time already elapsed for any Class or Subclass Representatives or Settlement Class Members on any applicable statutes of limitations will not be reset, and no expired claims will be revived, by virtue of this tolling agreement. Class and Subclass Representatives

and Settlement Class Members do not admit, by entering into this Settlement Agreement, that they have waived any applicable tolling protections available as a matter of law or equity. Nothing in this Settlement Agreement will constitute an admission in any manner that the statute of limitations has been tolled for anyone outside the Settlement Class, nor does it constitute a waiver of legal positions regarding tolling.

ARTICLE XIV

Notice, Opt Out, and Objections

Section 14.1 Notice

(a) As part of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Plaintiffs will submit to the Court a Settlement Class Notice Plan agreed upon by Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties.

(b) The Settlement Class Notice Plan, to be implemented by the Settlement Class Notice Agent following the Court's entry of the Preliminary Approval and Class Certification Order, and approval of the Settlement Class Notice (in the form of Exhibit 5), at the NFL Parties' expense, but not to exceed Four Million United States dollars (U.S. \$4,000,000), will be designed to meet the requirements of Fed. R. Civ. P. 23 (c)(2)(B), and will include: (i) direct notice by first-class mail; (ii) broad notice through the use of paid media including national radio spots, national consumer magazines, television and internet advertising; and (iii) electronic notice through the Settlement Website created under Section 4.1(a) and an automated telephone system created under Section 4.1(b).

(c) For the avoidance of any doubt, if there are any unused monies under the Four Million United States dollars (U.S. \$4,000,000) cap set forth in Section 14.1(b), those unused monies will remain with, or revert to, the NFL Parties.

(d) The Parties and the Claims Administrator will maintain a list of the names and addresses of each person to whom the Settlement Class Notice is transmitted in accordance with any order entered by the Court pursuant to ARTICLE XIII. These names and addresses will be kept strictly confidential and will be used only for purposes of administering this Class Action Settlement, except as otherwise ordered by the Court.

Section 14.2 Opt Outs

(a) The Settlement Class Notice will provide instructions regarding the procedures that must be followed to Opt Out of the Settlement Class pursuant to Fed. R. Civ. P. 23(c)(2)(B)(v). The Parties agree that, to Opt Out validly from the Settlement Class, a Settlement Class Member must submit a written request to Opt Out stating "I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323" (or substantially similar clear and unambiguous language) to the Claims Administrator on or before such date as is ordered by the Court. That written request also will contain the

Settlement Class Member's printed name, address, telephone number, and date of birth and enclose a copy of his or her driver's license or other government issued identification. A written request to Opt Out may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant seeking to exclude himself or herself from the Settlement Class. Attorneys for Settlement Class Members may submit a written request to Opt Out on behalf of a Settlement Class Member, but such request must contain the Personal Signature of the Settlement Class Member. The Claims Administrator will provide copies of all requests to Opt Out to Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties within seven (7) days of receipt of each such request. Valid requests to Opt Out from the Settlement Class will become effective on the Effective Date.

(b) All Settlement Class Members who do not timely and properly Opt Out from the Settlement Class will in all respects be bound by all terms of this Settlement Agreement and the Final Order and Judgment upon the Effective Date, will be entitled to all procedural opportunities and protections described in this Settlement Agreement and provided by the Court, and to all compensation and benefits for which they qualify under its terms, and will be barred permanently and forever from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Parties in any court of law or equity, arbitration tribunal, or administrative or other forum.

(c) Prior to the Final Approval Date, any Retired NFL Football Player, Representative Claimant, or Derivative Claimant may seek to revoke his or her Opt Out from the Settlement Class and thereby receive the benefits of this Class Action Settlement by submitting a written request to Co-Lead Class Counsel and Counsel for the NFL Parties stating "I wish to revoke my request to be excluded from the Settlement Class" (or substantially similar clear and unambiguous language), and also containing the Settlement Class Member's printed name, address, phone number, and date of birth. The written request to revoke an Opt Out must contain the Personal Signature of the Settlement Class Member seeking to revoke his or her Opt Out.

Section 14.3 Objections

(a) Provided a Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a), the Settlement Class Member may present written objections, if any, explaining why he or she believes the Class Action Settlement should not be approved by the Court as fair, reasonable, and adequate. No later than such date as is ordered by the Court, a Settlement Class Member who wishes to object to any aspect of the Class Action Settlement must file with the Court, or as the Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of the Settlement Class Member's objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court's attention. That written statement also will contain the Settlement Class Member's printed name, address, telephone number, and date of birth, written evidence

establishing that the objector is a Settlement Class Member, and any other supporting papers, materials, or briefs the Settlement Class Member wishes the Court to consider when reviewing the objection. A written objection may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant seeking to exclude himself or herself from the Settlement Class. Settlement Class Members who do not follow the procedures will be deemed to have waived any objections they may have.

(b) A Settlement Class Member may object on his or her own behalf or through an attorney hired at that Settlement Class Member's own expense, provided the Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a). Attorneys asserting objections on behalf of Settlement Class Members must: (i) file a notice of appearance with the Court by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct; (ii) file a sworn declaration attesting to his or her representation of each Settlement Class Member on whose behalf the objection is being filed or a copy of the contract (to be filed *in camera*) between that attorney and each such Settlement Class Member; and (iii) comply with the procedures described in this Section.

(c) A Settlement Class Member (or counsel individually representing him or her, if any) seeking to make an appearance at the Fairness Hearing must file with the Court, by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct, a written notice of his or her intention to appear at the Fairness Hearing, in accordance with the requirements set forth in the Preliminary Approval and Class Certification Order.

(d) Any Settlement Class Member who fails to comply with the provisions of this Section 14.3 will waive and forfeit any and all rights he or she may have to object to the Class Action Settlement.

ARTICLE XV **Communications to the Public**

Section 15.1 The form, content, and timing of any public statement announcing the filing of this Settlement Agreement will be subject to mutual agreement by Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties. The Parties and their counsel agree not to make any public statements, including statements to the media, that are inconsistent with the Settlement Agreement. Any communications to the public or the media made by or on behalf of the Parties and their respective counsel regarding the Class Action Settlement will be made in good faith and will be consistent with the Parties' agreement to take all actions reasonably necessary for preliminary and final approval of this Class Action Settlement. Any information contained in such communications will be balanced, fair, accurate, and consistent with the content of the Settlement Class Notice.

(a) Nothing herein is intended or will be interpreted to inhibit or interfere with the ability of Co-Lead Class Counsel, Class Counsel, Subclass Counsel,

or Counsel for the NFL Parties to communicate with the Court, their clients, or Settlement Class Members and/or their counsel.

(b) Co-Lead Class Counsel, Class Counsel and Subclass Counsel acknowledge and agree, and the Preliminary Approval and Class Certification Order will provide, that the NFL Parties have the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members on matters unrelated to the Class Action Settlement in connection with the NFL Parties' normal business.

ARTICLE XVI Termination

Section 16.1 Walk-Away Right of NFL Parties. Without limiting any other rights under this Settlement Agreement, the NFL Parties will have the absolute and unconditional right, in their sole good faith discretion, to unilaterally terminate and render null and void this Class Action Settlement and Settlement Agreement for any reason whatsoever following notice of Opt Outs and prior to the Fairness Hearing. The NFL Parties must provide written election to terminate this Settlement Agreement to Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and the Court prior to the Fairness Hearing.

Section 16.2 Party Termination Rights

(a) Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties each have the absolute and unconditional right, in their sole discretion, which discretion will be exercised in good faith, to terminate and render null and void this Class Action Settlement and Settlement Agreement if (i) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement that Co-Lead Class Counsel, Class Counsel, Subclass Counsel or Counsel for the NFL Parties reasonably and in good faith determines is material, including, without limitation, the Releases or the definition of the Settlement Class, or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the proposed Preliminary Approval and Class Certification Order or the proposed Final Order and Judgment (Exhibit 4) that Co-Lead Class Counsel, Class Counsel, Subclass Counsel or Counsel for the NFL Parties reasonably and in good faith believes is material. Such written election to terminate this Settlement Agreement must be made to the Court within thirty (30) days of such Court order.

(b) Co-Lead Class Counsel, Class Counsel and Subclass Counsel may not terminate and render null and void this Class Action Settlement and Settlement Agreement on the basis of the attorneys' fees award ordered, or modified, by the Court or any appellate court(s), as set forth in ARTICLE XXI.

Section 16.3 Post-Termination Actions

(a) In the event this Settlement Agreement is terminated or becomes null and void, this Settlement Agreement will not be offered into evidence or

used in this or in any other action in the Court, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum for any purpose, including, but not limited to, the existence, certification, or maintenance of any purported class. In addition, in such event, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement Agreement will be without prejudice to all Parties and will not be admissible into evidence and will not be deemed or construed to be an admission or concession by any of the Parties of any fact, matter, or proposition of law and will not be used in any manner for any purpose, and all Parties will stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

(b) In the event this Settlement Agreement is terminated or becomes null and void, the Parties will jointly move the Court to vacate the Preliminary Approval and Certification Order and any other orders certifying a Settlement Class provided.

(c) If this Settlement Agreement is terminated or becomes null and void after notice has been given, the Parties will provide Court-approved notice of termination to the Settlement Class. If a Party terminates the Settlement Agreement in accordance with Section 16.1 or Section 16.2, that Party will pay the cost of notice of termination.

(d) In the event this Settlement Agreement is terminated or becomes null and void, any unspent and uncommitted monies in the Funds will revert to the NFL Parties within ten (10) days, and all data provided by the NFL Parties, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and/or Settlement Class Members shall be returned or destroyed.

ARTICLE XVII

Treatment of Confidential Information

Section 17.1 Confidentiality of Information Relating to the Settlement Agreement. The Parties will treat all confidential or proprietary information shared hereunder, or in connection herewith, either prior to, on or after the Settlement Date, and any and all prior or subsequent drafts, representations, negotiations, conversations, correspondence, understandings, analyses, proposals, term sheets, and letters, whether oral or written, of any kind or nature, with respect to the subject matter hereof (“Confidential Information”) in conformity with strict confidence and will not disclose Confidential Information to any non-Party without the prior written consent of the Party that shared the Confidential Information, except: (i) as required by applicable law, regulation, or by order or request of a court of competent jurisdiction, regulator, or self-regulatory organization (including subpoena or document request), provided that the Party that shared the Confidential Information is given prompt written notice thereof and, to the extent practicable, an opportunity to seek a protective order or other confidential treatment thereof, provided further that the Party subject to such requirement or request cooperates fully with the Party that shared the Confidential Information in connection therewith, and only such Confidential Information is disclosed as is legally required to be

disclosed in the opinion of legal counsel for the disclosing Party; (ii) under legal (including contractual) or ethical obligations of confidentiality, on an as-needed and confidential basis to such Party's present and future accountants, counsel, insurers, or reinsurers; or (iii) with regard to any information that is already publicly known through no fault of such Party or its Affiliates. This Settlement Agreement, all exhibits hereto, any other documents filed in connection with the Class Action Settlement, and any information disclosed through a public court proceeding shall not be deemed Confidential Information.

Section 17.2 Confidentiality of Retired NFL Football Player Information

(a) All information relating to a Retired NFL Football Player that is disclosed to or obtained by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, or the Court, may be used only by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, or the Court for the administration of this Class Action Settlement according to the Settlement Agreement terms and conditions. All such information relating to a Retired NFL Football Player will be treated as Confidential Information hereunder, will be subject to the terms of Section 17.1 hereof, and, where applicable, will be treated as Protected Health Information subject to HIPAA and other applicable privacy laws.

ARTICLE XVIII Releases and Covenant Not to Sue

Section 18.1 Releases

(a) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Settlement Class, the Class and Subclass Representatives, and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), hereby waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in

connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits (“Claims”), including, without limitation, Claims:

(i) that were, are or could have been asserted in the Class Action Complaint or any other Related Lawsuit; and/or

(ii) arising out of, or relating to, head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events of whatever cause and its damages (whether short-term, long-term or death), whenever arising, including, without limitation, Claims for personal or bodily injury, including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life (and exacerbation and/or progression of personal or bodily injury), or wrongful death and/or survival actions as a result of such injury and/or exacerbation and/or progression thereof; and/or

(iii) arising out of, or relating to, neurocognitive deficits or impairment, or cognitive disorders, of whatever kind or degree, including, without limitation, mild cognitive impairment, moderate cognitive impairment, dementia, Alzheimer’s Disease, Parkinson’s Disease, and ALS; and/or

(iv) arising out of, or relating to, CTE; and/or

(v) arising out of, or relating to, loss of support, services, consortium, companionship, society, or affection, or damage to familial relations (including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vi) arising out of, or relating to, increased risk, possibility, or fear of suffering in the future from any head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events, and including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vii) arising out of, or relating to, medical screening and medical monitoring for undeveloped, unmanifested, and/or undiagnosed head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events; and/or

(viii) premised on any purported or alleged breach of any Collective Bargaining Agreement related to the issues in the Class Action Complaint and/or Related Lawsuits, except claims for workers’ compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

(b) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims,

arising from, relating to, or resulting from the reporting, transmittal of information, or communications between or among the NFL Parties, Counsel for the NFL Parties, the Special Master, Claims Administrator, Lien Resolution Administrator, any Governmental Payor, and/or Medicare Part C or Part D Program sponsor regarding any claim for benefits under this Settlement Agreement, including any consequences in the event that this Settlement Agreement impacts, limits, or precludes any Settlement Class Member's right to benefits under Social Security or from any Governmental Payor or Medicare Part C or Part D Program sponsor.

(c) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims, pursuant to the MSP Laws, or other similar causes of action, arising from, relating to, or resulting from the failure or alleged failure of any of the Released Parties to provide for a primary payment or appropriate reimbursement to a Governmental Payor or Medicare Part C or Part D Program sponsor with a Lien in connection with claims for medical items, services, and/or prescription drugs provided in connection with compensation or benefits claimed or received by a Settlement Class Member pursuant to this Settlement Agreement.

(d) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties, the Special Master, BAP Administrator, Claims Administrator, and their respective officers, directors, and employees from any and all Claims, including unknown Claims, arising from, relating to, or resulting from their participation, if any, in the BAP, including, but not limited to, Claims for negligence, medical malpractice, wrongful or delayed diagnosis, personal injury, bodily injury (including disease, trauma, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life), or death arising from, relating to, or resulting from such participation.

Section 18.2 Release of Unknown Claims. In connection with the releases in Section 18.1, the Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class acknowledge that they are aware that they may hereafter discover Claims now unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to actions or matters released herein. Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class explicitly took unknown or unsuspected claims into account in entering into the Settlement Agreement and it is the intention of the Parties fully, finally and forever to settle and release all Claims as provided in Section 18.1 with respect to all such matters.

Section 18.3 Scope of Releases

(a) Each Party acknowledges that it has been informed of Section 1542 of the Civil Code of the State of California (and similar statutes) by its counsel and that it does hereby expressly waive and relinquish all rights and benefits, if any, which it, he or she has or may have under said section (and similar sections) which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(b) The Parties acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other state, territory, or other jurisdiction was separately bargained for and that the Parties would not have entered into this Settlement Agreement unless it included a broad release of unknown claims relating to the matters released herein.

(c) The Releasors intend to be legally bound by the Releases.

(d) The Releases are not intended to prevent the NFL Parties from exercising their rights of contribution, subrogation, or indemnity under any law.

(e) Nothing in the Releases will preclude any action to enforce the terms of this Settlement Agreement in the Court.

(f) The Parties represent and warrant that no promise or inducement has been offered or made for the Releases contained in this Article except as set forth in this Settlement Agreement and that the Releases are executed without reliance on any statements or any representations not contained in this Settlement Agreement.

Section 18.4 Covenant Not to Sue. From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Class and Subclass Representatives, each Settlement Class Member, and the Settlement Class, on behalf of the Releasors, and each of them, covenant, promise, and agree that they will not, at any time, continue to prosecute, commence, file, initiate, institute, cause to be instituted, assist in instituting, or permit to be instituted on their, his, her, or its behalf, or on behalf of any other individual or entity, any proceeding: (a) alleging or asserting any of his or her respective Released Claims against the Released Parties in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, including, without limitation, the Claims set forth in Section 18.1; or (b) challenging the validity of the Releases. To the extent any such proceeding exists in any court, tribunal or other forum as of the Effective Date, the Releasors covenant, promise and agree to withdraw, and seek a dismissal with prejudice of, such proceeding forthwith.

Section 18.5 Covenant Regarding Amateur Football Litigation.

Settlement Class Members who receive Monetary Awards will agree, as a condition precedent to receiving Monetary Awards, to dismiss pending, and/or forebear from bringing, litigation relating to cognitive injuries against the National Collegiate Athletic Association and/or other collegiate, amateur or youth football organizations and entities.

Section 18.6 No Release for Insurance Coverage.

(a) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not release any Governmental Payor or Medicare Part C or Part D Program sponsor from its or their obligation to provide any health insurance coverage, major medical insurance coverage, or disability insurance coverage to a Settlement Class Member, or from any claims, demands, rights, or causes of action of any kind that a Settlement Class Member has or hereafter may have with respect to such individuals or entities.

(b) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(aaaa)(i)-(ii).

Section 18.7 Nothing contained in this Settlement Agreement, including the Release and Covenant Not to Sue provisions in this ARTICLE XVIII, affects the rights of Settlement Class Members to pursue claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

**ARTICLE XIX
Bar Order**

Section 19.1 Bar Order. As a condition to the Settlement, the Parties agree to move the Court for a bar order, as part of the Final Order and Judgment (substantially in the form of Exhibit 4), as set forth in Section 20.1.

Section 19.2 Judgment Reduction. With respect to any litigation by the Releasors against Riddell, the Releasors further agree that if a verdict in their favor results in a verdict or judgment for contribution or indemnity against the Released Parties, the Releasors will not enforce their right to collect this verdict or judgment to the extent that such enforcement creates liability against the Released Parties. In such event, the Releasors agree that they will reduce their claim or agree to a judgment reduction or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability against the Released Parties or any Other Party claiming contribution or indemnity.

ARTICLE XX

Final Order and Judgment and Dismissal With Prejudice

Section 20.1 The Parties will jointly seek a Final Order and Judgment from the Court, substantially in the form of Exhibit 4, approval and entry of which shall be a condition of this Settlement Agreement, that:

- (a) Approves the Class Action Settlement in its entirety pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable, and adequate;
- (b) Finds that this Settlement Agreement, with respect to each Subclass, is fair, reasonable, and adequate;
- (c) Confirms the certification of the Settlement Class for settlement purposes only;
- (d) Confirms the appointment of the Class and Subclass Representatives;
- (e) Confirms the appointment of Co-Lead Class Counsel, Class Counsel and Subclass Counsel;
- (f) Finds that the Settlement Class Notice satisfied the requirements set forth in Fed. R. Civ. P. 23(c)(2)(B);
- (g) Permanently bars, enjoins and restrains the Releasors (and each of them) from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Party;
- (h) Dismisses with prejudice the Class Action Complaint, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that the motion for an award of attorneys' fees and reasonable costs, as set forth in Section 21.1, will be made at an appropriate time to be determined by the Court;
- (i) Orders the dismissal with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, of all Related Lawsuits pending in the Court as to the Released Parties, thereby effectuating in part the Releases;
- (j) Orders all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, promptly to dismiss with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, all such Related Lawsuits as to the Released Parties, thereby effectuating in part the Releases;
- (k) Permanently bars and enjoins the commencement, assertion, and/or prosecution of any claim for contribution and/or indemnity in the Court, in any other federal court, state court, arbitration, regulatory agency, or other tribunal or

forum between the Released Parties and all alleged joint tortfeasors, other than Riddell, together with an appropriate judgment reduction provision;

(l) Confirms the appointment of the Special Master, Garretson Group as the BAP Administrator, BrownGreer as the Claims Administrator, Garretson Group as the Liens Resolution Administrator, and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed;

(m) Confirms that the Court retains continuing jurisdiction over the “qualified settlement funds,” as defined under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended, created under the Settlement Agreement; and

(n) Expressly incorporates the terms of this Settlement Agreement and provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class Members and this Settlement Agreement, to interpret, implement, administer and enforce the Settlement Agreement in accordance with its terms.

ARTICLE XXI Attorneys' Fees

Section 21.1 Award. Separately and in addition to the NFL Parties' payment of the monies set forth in ARTICLE XXIII and any consideration received by Settlement Class Members under this Settlement, the NFL Parties shall pay class attorneys' fees and reasonable costs. Co-Lead Class Counsel, Class Counsel and Subclass Counsel shall be entitled, at an appropriate time to be determined by the Court, to petition the Court on behalf of all entitled attorneys for an award of class attorneys' fees and reasonable costs. Provided that said petition does not seek an award of class attorneys' fees and reasonable costs exceeding One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000), the NFL Parties agree not to oppose or object to the petition. Ultimately, the award of class attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.

Section 21.2 Payment. No later than sixty (60) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000) into the Attorneys' Fees Qualified Settlement Fund, as set forth in Section 23.9, to be held in escrow until such payment shall be made as directed by the Court.

ARTICLE XXII Enforceability of Settlement Agreement and Dismissal of Claims

Section 22.1 It is a condition of this Settlement Agreement that the Court approve and enter the Preliminary Approval and Class Certification Order and Final Order and Judgment substantially in the form of Exhibit 4.

Section 22.2 The Parties agree that this Class Action Settlement is not final and enforceable until the Effective Date, except that upon entry of the Preliminary Approval and Class Certification Order, the NFL Parties will be obligated to make the Settlement Class Notice Payment as set forth in Sections 14.1 and 23.1.

Section 22.3 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Court will dismiss with prejudice all Released Claims by any and all Releasors against any and all Released Parties pending in the Court, and any and all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, will dismiss with prejudice the Related Lawsuits as to the Released Parties, including any related appeals.

Section 22.4 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Parties agree that each and every Releasor will be permanently barred and enjoined from commencing, filing, initiating, instituting, prosecuting, and/or maintaining any judicial, arbitral, or regulatory action against any Released Party with respect to any and all Released Claims.

Section 22.5 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, this Settlement Agreement will be the exclusive remedy for any and all Released Claims by or on behalf of any and all Releasors against any and all Released Parties, and no Releasor will recover, directly or indirectly, any sums from any Released Parties for Released Claims other than those received for the Released Claims under the terms of this Settlement Agreement, if any.

Section 22.6 From and after the Effective Date, if any Releasor, in violation of Section 18.4, commences, files, initiates, or institutes any new action or other proceeding for any Released Claims against any Released Parties, or continues to prosecute any pending claims, or challenges the validity of the Releases, in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, such action or other proceeding will be dismissed with prejudice and at such Releasor's cost; provided, however, before any costs may be assessed, counsel for such Releasor or, if not represented, such Releasor, will be given reasonable notice and an opportunity voluntarily to dismiss such new action or proceeding with prejudice. Furthermore, if the NFL Parties or any other Released Party brings any legal action before the Court to enforce its rights under this Settlement Agreement against a Settlement Class Member and prevails in such action, that Released Party will be entitled to recover any and all related costs and expenses (including attorneys' fees) from any Releasor found to be in violation or breach of his or her obligations under this Article.

ARTICLE XXIII **NFL Payment Obligations**

Section 23.1 Funding Amount. In consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of

the Class Action Complaint and the Related Lawsuits, and subject to the terms and conditions of this Settlement Agreement, the NFL Parties will pay in accordance with the funding terms set forth herein:

(a) Settlement Amount. Seven Hundred and Fifty Million United States dollars (U.S. \$750,000,000), which monies will be used to fund the BAP (up to a maximum of Seventy Five Million United States dollars (U.S. \$75,000,000)) and the Monetary Award Fund;

(b) Education Fund Amount. Ten Million United States dollars (U.S. \$10,000,000), which monies will be used exclusively to fund the Education Fund;

(c) Settlement Class Notice Payment. Up to a maximum of Four Million United States dollars (U.S. \$4,000,000); and

(d) Part of the Annual Compensation of the Special Master. Fifty percent (50%) of the annual compensation of the Special Master appointed by the Court, whose total annual compensation shall not exceed Two Hundred Thousand United States dollars (U.S. \$200,000).

(e) Notwithstanding any provision of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, or any subsequent legislation mandating or subsidizing health insurance coverage, the NFL Parties will pay, or cause to be paid, in full the amounts set forth above in Section 23.1(a)-(d), and will not bill any Governmental Payor or Medicare Part C or Part D Program for any such costs.

Section 23.2 Exclusive Payments. For the avoidance of any doubt, other than as set forth in Sections 9.6(b), 21.2 and 23.5, the NFL Parties will have no additional payment obligations in connection with this Settlement Agreement.

Section 23.3 Funding Terms

(a) The NFL Parties' payment obligations will be funded as follows:

(b) No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Ten Million United States dollars (U.S. \$10,000,000) into the Settlement Trust Account, as set forth in Section 23.7, for transfer by the Trustee into the Education Fund.

(c) No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of One Hundred and Eighty-Seven Million, Five Hundred Thousand United States dollars (U.S. \$187,500,000) into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund.

(d) No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Thirty-Five Million United States dollars (U.S. \$35,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund.

(e) On the one-year anniversary of the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Seventy-Five Million United States dollars (U.S. \$75,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund and/or Monetary Award Fund. The NFL Parties' payment will be allocated between the BAP Fund and Monetary Award Fund by the Trustee such that Ten Million United States dollars (U.S. \$10,000,000) is maintained in the BAP Fund immediately following that transfer. If the BAP Fund holds more than Ten Million dollars (U.S. \$10,000,000) on the one-year anniversary of the Effective Date, the full Seventy-Five Million United States dollars (U.S. \$75,000,000) will be transferred from the Settlement Trust Account into the Monetary Award Fund. Thereafter, if at any point during the second year of the BAP the balance of the BAP Fund falls below Ten Million United States dollars (U.S. \$10,000,000), the BAP Administrator and/or Co-Lead Class Counsel may request that the Special Master direct that additional sums from the Monetary Award Fund be allocated and transferred to the BAP Fund in order to maintain a balance of no less than Ten Million United States dollars (U.S. \$10,000,000), subject to the cap on BAP funding.

(f) On the two-year anniversary of the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Seventy-Five Million United States dollars (U.S. \$75,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund and/or Monetary Award Fund. The NFL Parties' payment will be allocated between the BAP Fund and Monetary Award Fund by the Trustee such that Ten Million United States dollars (U.S. \$10,000,000) is maintained in the BAP Fund immediately following that transfer. If the BAP Fund holds more than Ten Million United States dollars (U.S. \$10,000,000) on the two-year anniversary of the Effective Date, the full Seventy-Five Million United States dollars (U.S. \$75,000,000) will be transferred from the Settlement Trust Account into the Monetary Award Fund. Thereafter, if at any point during the third year of the BAP the balance of the BAP Fund falls below Ten Million United States dollars (U.S. \$10,000,000), the BAP Administrator and/or Co-Lead Class Counsel may request that the Special Master direct that additional sums from the Monetary Award Fund be allocated and transferred to the BAP Fund in order to maintain a balance of no less than Ten Million United States dollars (U.S. \$10,000,000) in the BAP Fund, subject to the cap on BAP funding.

(g) Beginning on the three-year anniversary of the Effective Date, and for the remainder of the funding term that concludes on the twenty-year anniversary of the Effective Date, the NFL Parties will pay, or cause to be paid, equal annual installment payments, sufficient in aggregate to pay the remaining unfunded Settlement Amount, into the Settlement Trust Account for transfer by the Trustee into the BAP Fund and/or Monetary Award Fund. The NFL Parties' annual payment will be allocated between the BAP Fund and Monetary Award Fund by the Trustee such that Ten Million United States dollars (U.S. \$10,000,000) is maintained in the BAP Fund

immediately following that transfer, except that under no circumstances will the aggregate transfers to the BAP Fund exceed Seventy-Five Million United States dollars (U.S. \$75,000,000) over the term of the BAP Fund.

(h) The NFL Parties will have the right (but not the obligation) to prepay, or cause to be prepaid, any of their payment obligations to the Funds under the Settlement Agreement. In connection with any such prepayment, the NFL Parties will designate in writing the payment obligation that is being prepaid and how such prepayment should affect the NFL Parties' remaining payment obligations (*i.e.*, whether the amount prepaid should be credited against the next payment obligation or to one or more subsequent payment obligations or a combination thereof).

Section 23.4 Notwithstanding the NFL Parties' funding obligations during the initial two (2) years of the Class Action Settlement and thereafter, if at any point following the Effective Date the balance of the Monetary Award Fund falls below Fifty Million United States dollars (U.S. \$50,000,000), the NFL Parties, upon forty-five (45) days advance written notice, and at the direction of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), will pay, or cause to be paid, additional installments of the remaining unfunded Settlement Amount into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund in order to maintain a balance of no less than Fifty Million United States dollars (U.S. \$50,000,000) in the Monetary Award Fund, unless a payment scheduled under Section 23.3 will occur within the forty-five (45) day notice period and that payment will maintain a balance of no less than Fifty Million United States dollars (U.S. \$50,000,000), or unless less than Fifty Million United States dollars (U.S. \$50,000,000) of the Settlement Amount remains unfunded. In such event, the remaining equal annual installment payments into the Settlement Trust Account for the remainder of the funding term will be recalculated accordingly.

Section 23.5 Additional Contingent Contribution. In the event that Co-Lead Class Counsel, Counsel for the NFL Parties and the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) agree that the Settlement Amount is insufficient to pay all approved claims from the Monetary Award Fund, the Special Master (or the Claims Administrator after expiration of the term of the Special Master) will make a recommendation to the Court that the NFL Parties pay, or cause to be paid, an additional contribution up to a maximum amount of Thirty-Seven Million, Five Hundred Thousand United States dollars (U.S. \$37,500,000) into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund. Upon Court approval of the recommendation, the NFL Parties will make this Additional Contingent Contribution into the Settlement Trust Account within sixty (60) days. In no event will the aggregate Additional Contingent Contribution made by the NFL Parties pursuant to this paragraph exceed Thirty-Seven Million, Five Hundred Thousand United States dollars (U.S. \$37,500,000).

Section 23.6 No Interest or Inflation Adjustment. For the avoidance of any doubt, the payments set forth in Section 23.1, and the contingent payments set forth in Section 23.5, will not be subject to any interest obligation or inflation adjustment.

Section 23.7 Settlement Trust

(a) Promptly following the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will file a motion seeking the creation of a Settlement Trust under Delaware law and the appointment of the Trustee. Co-Lead Class Counsel and Counsel for the NFL Parties will file a proposed Settlement Trust Agreement with the Court.

(b) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend Citibank, N.A. as the Trustee, subject to the approval of the Court. The Trustee may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, and granted by the Court. If the Trustee resigns, dies, is replaced, or is otherwise unable to continue employment in that position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Trustee for appointment by the Court.

(c) Upon Court approval of the proposed Settlement Trust Agreement, Co-Lead Class Counsel, the NFL Parties, the Trustee and the Special Master, will execute the Settlement Trust Agreement approved by the Court, thereby creating the Settlement Trust. The Settlement Trust will be structured and operated in a manner so that it qualifies as a "qualified settlement fund" under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended.

(d) The Settlement Trust will be composed of the Funds. The Trustee will establish the Settlement Trust Account, into which the NFL Parties will make payments as required by this Settlement Agreement. The Trustee will also establish three separate funds (the "Funds"), into which the Trustee will transfer funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and extension(s) thereof) and pursuant to the terms of this Settlement Agreement and on which the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) will have signatory authority. These Funds will constitute a single qualified settlement fund:

(i) The BAP Fund, which will be used to make payments for the BAP, as set forth in ARTICLE V.

(ii) The Monetary Award Fund, which will be used to make payments for: (a) all Monetary Awards and Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII; (b) certain costs and expenses of the appeals process, as set forth in ARTICLE IX; (c) costs and expenses of claims administration, excluding the fifty percent (50%) of the annual compensation of the Special Master paid by the NFL Parties, as set forth in ARTICLE X; and (d) certain costs and expenses of the Lien identification and resolution process, as set forth in ARTICLE XI;

(iii) The Education Fund, which will be used exclusively to make payments to support education programs and initiatives, as set forth in ARTICLE XII; and

(iv) The Settlement Trust Account, which will be used solely to transfer funds into the Funds described above in Section 23.7(d)(i)-(iii).

(e) The Settlement Trust will be managed by the Trustee as provided in the Settlement Trust Agreement, and both the Settlement Trust and Trustee will be subject to the continuing jurisdiction and supervision of the Court. Each of the Funds will be maintained in separate bank accounts at one or more federally insured depository institutions approved by Co-Lead Class Counsel and Counsel for the NFL Parties. The Trustee will have the authority to make payments from the Settlement Trust Account into the other Funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) and to make disbursements from the Funds at the direction of the Special Master (or the Claims Administrator at the direction of Co-Lead Class Counsel and Counsel for the NFL Parties, after expiration of the term of the Special Master and any extension(s) thereof), and consistent with the terms of this Settlement Agreement and the Settlement Trust Agreement.

(f) The Trustee will be responsible for making any necessary tax filings and payments of taxes, estimated taxes, and associated interest and penalties, if any, by the Settlement Trust and responding to any questions from, or audits regarding such taxes by, the Internal Revenue Service or any state or local tax authority. The Trustee also will be responsible for complying with all tax information reporting and withholding requirements with respect to payments made by the Settlement Trust, as well as paying any associated interest and penalties. Any such taxes, interest, and penalty payments will be paid by the Trustee from the Monetary Award Fund.

Section 23.8 Funds Investment

(a) Amounts deposited in each of the Funds will be invested conservatively in a manner designed to assure timely availability of funds, protection of principal and avoidance of concentration risk.

(b) Any earnings attributable to the BAP Fund, the Monetary Award Fund, and/or the Education Fund will be retained in the respective Fund.

Section 23.9 Attorneys' Fees Qualified Settlement Fund. Unless the Court directs otherwise, a separate fund (intended to qualify as a "qualified settlement fund" under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended) will be established out of which attorneys' fees will be paid pursuant to order of the Court, as set forth in ARTICLE XXI. This separate qualified settlement fund will be established pursuant to order of the Court, and will operate under Court supervision and control. This separate qualified settlement fund will be separate from the qualified settlement fund described in

Section 23.7(c) and any of the Funds described therein, and will not be administered by the Trustee. The Court will determine the form and manner of administering this fund, in which the NFL Parties will have no reversionary interest.

Section 23.10 Trustee Satisfaction of Monetary Obligations. Wherever in this Settlement Agreement the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator is authorized or directed, as the context may reflect, to pay, disburse, reimburse, hold, waive, or satisfy any monetary obligation provided for or recognized under any of the terms of this Settlement Agreement, the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator may comply with such authorization or direction by directing the Trustee to, as appropriate, pay, disburse, reimburse, hold, waive, or satisfy any such monetary obligation.

ARTICLE XXIV **Denial of Wrongdoing, No Admission of Liability**

Section 24.1 This Settlement Agreement, whether or not the Class Action Settlement becomes effective, is for settlement purposes only and is to be construed solely as a reflection of the Parties' desire to facilitate a resolution of the Class Action Complaint and of the Released Claims and Related Lawsuits. The NFL Parties expressly deny that they, or the other Released Parties, have violated any duty to, breached any obligation to, committed any fraud on, or otherwise engaged in any wrongdoing with respect to, the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member, and expressly deny the allegations asserted in the Class Action Complaint and Related Lawsuits, and deny any and all liability related thereto. Neither this Settlement Agreement nor any actions undertaken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of this Settlement Agreement will constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member in this or any other action or proceeding.

Section 24.2 In no event will the Settlement Agreement, whether or not the Class Action Settlement becomes effective, or any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions, or any actions undertaken in this Settlement Agreement, in any way be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or an admission

or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member of any claims, causes of action, or remedies. This Section 24.2 shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

ARTICLE XXV **Representations and Warranties**

Section 25.1 Authority. Co-Lead Class Counsel, Class Counsel and Subclass Counsel represent and warrant as of the Settlement Date that they have authority to enter into this Settlement Agreement on behalf of the Class and Subclass Representatives.

Section 25.2 Class and Subclass Representatives. Each of the Class and Subclass Representatives, through a duly authorized representative, represents and warrants that he: (i) has agreed to serve as a representative of the Settlement Class proposed to be certified herein; (ii) is willing, able, and ready to perform all of the duties and obligations as a representative of the Settlement Class; (iii) is familiar with the pleadings in In re: National Football League Players' Concussion Injury Litigation, MDL 2323, or has had the contents of such pleadings described to him; (iv) is familiar with the terms of this Settlement Agreement, including the exhibits attached to this Settlement Agreement, or has received a description of the Settlement Agreement from Co-Lead Class Counsel, Class Counsel and/or Subclass Counsel, and has agreed to its terms; (v) has consulted with, and received legal advice from, Co-Lead Class Counsel, Class Counsel and/or Subclass Counsel about the litigation, this Settlement Agreement (including the advisability of entering into this Settlement Agreement and its Releases and the legal effects of this Settlement Agreements and its Releases), and the obligations of a representative of the Settlement Class; (vi) has authorized Co-Lead Class Counsel, Class Counsel and/or Subclass Counsel to execute this Settlement Agreement on his behalf; and (vii) will remain in and not request exclusion from the Settlement Class and will serve as a representative of the Settlement Class until the terms of this Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that such Class or Subclass Representative cannot represent the Settlement Class.

Section 25.3 NFL Parties. The NFL Parties represent and warrant as of the Settlement Date that: (i) they have all requisite corporate power and authority to execute, deliver, and perform this Settlement Agreement; (ii) the execution, delivery, and performance by the NFL Parties of this Settlement Agreement has been duly authorized by all necessary corporate action; (iii) this Settlement Agreement has been duly and validly executed and delivered by the NFL Parties; and (iv) this Settlement Agreement constitutes their legal, valid, and binding obligation.

Section 25.4 Investigation and Future Events. The Parties and their counsel represent and warrant that they have each performed an independent

investigation of the allegations of fact and law made in connection with the Class Action Complaint in In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323, and may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of this Settlement Agreement. Nevertheless, the Parties intend to resolve their disputes pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, this Settlement Agreement will remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Settlement Agreement will not be subject to rescission or modification by reason of any change or difference in facts or law.

Section 25.5 Security

(a) The NFL Parties represent and warrant that the NFL currently maintains an investment grade rating on its Stadium Program Bonds, as rated by Fitch Ratings. If the rating on the Stadium Program Bonds falls below investment grade during the twenty-year funding term of the Monetary Award Fund, Co-Lead Class Counsel and Counsel for the NFL Parties will negotiate in good faith regarding a security arrangement on the remaining unfunded portion of the Settlement Amount.

(b) If the identity of the rating agency that rates the NFL's Stadium Program Bonds changes during the funding term of the Monetary Award Fund, then an investment grade rating by the new rating agency on the NFL's Stadium Program Bonds will satisfy the NFL Parties' obligations under Section 25.5(a).

(c) The applicable definition of "investment grade" will be as provided by the rating agency rating the NFL's Stadium Program Bonds.

ARTICLE XXVI Cooperation

Section 26.1 The Parties will cooperate, assist, and undertake all reasonable actions to accomplish the steps contemplated by this Settlement Agreement and to implement the Class Action Settlement on the terms and conditions provided herein.

Section 26.2 The Parties agree to take all actions necessary to obtain final approval of the Class Action Settlement and entry of a Final Order and Judgment, including the terms and provisions described in this Settlement Agreement, and, upon final approval and entry of such order, an order dismissing the Class Action Complaint and Related Lawsuits with prejudice as to the Class and Subclass Representatives, the Settlement Class, and each Settlement Class Member.

Section 26.3 The Parties and their counsel agree to support the final approval and implementation of this Settlement Agreement and defend it against objections, appeal, collateral attack or any efforts to hinder or delay its approval and implementation. Neither the Parties nor their counsel, directly or indirectly, will encourage any person to object to the Class Action Settlement or assist them in doing so.

ARTICLE XXVII

Continuing Jurisdiction

Section 27.1 Pursuant to the Final Order and Judgment, the Court will retain continuing and exclusive jurisdiction over the Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Liens Resolution Administrator, Appeals Advisory Panel, and Trustee with respect to the terms of the Settlement Agreement. Any disputes or controversies arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Settlement Agreement will be made by motion to the Court. In addition, the Parties, including each Settlement Class Member, are hereby deemed to have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement Agreement. The terms of the Settlement Agreement will be incorporated into the Final Order and Judgment of the Court, which will allow that Final Order and Judgment to serve as an enforceable injunction by the Court for purposes of the Court's continuing jurisdiction related to the Settlement Agreement.

(a) Notwithstanding any contrary law applicable to the underlying claims, this Settlement Agreement and the Releases hereunder will be interpreted and enforced in accordance with the laws of the State of New York, without regard to conflict of law principles.

ARTICLE XXVIII

Role of Co-Lead Class Counsel, Class Counsel and Subclass Counsel

Section 28.1 Co-Lead Class Counsel and Class Counsel acknowledge that, under applicable law, their respective duty is to the entire Settlement Class, to act in the best interest of the Settlement Class as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the Settlement Class.

Section 28.2 Subclass Counsel acknowledge that, under applicable law, their respective duty is to their respective Subclasses, to act in the best interest of the respective Subclass as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the respective Subclass.

ARTICLE XXIX

Bargained-For Benefits

Section 29.1 Nothing in the Collective Bargaining Agreement will preclude Settlement Class Members from receiving benefits under the Settlement Agreement. In addition, the fact that a Settlement Class Member has signed, or will sign, a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement will not preclude the Settlement Class Member from receiving benefits under the Settlement Agreement, and the NFL Parties agree not to assert any defense or objection to the Settlement Class Member's receipt of benefits under the Settlement Agreement on the ground that he executed a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement.

Section 29.2 A Retired NFL Football Player's participation in the Settlement Agreement will not in any way affect his eligibility for bargained-for benefits under the Collective Bargaining Agreement or the terms or conditions under which those benefits are provided, except as set forth in Section 18.1.

ARTICLE XXX

Miscellaneous Provisions

Section 30.1 No Assignment of Claims. Neither the Settlement Class nor any Class or Subclass Representative or Settlement Class Member has assigned, will assign, or will attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint. Any such assignment, or attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint will be void, invalid, and of no force and effect and the Claims Administrator shall not recognize any such action.

Section 30.2 Individual Counsel

(a) Counsel individually representing a Settlement Class Member, and acting on his or her behalf, may submit all claim forms, proof, correspondence, or other documents to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator on behalf of that Settlement Class Member; provided, however, that counsel individually representing a Settlement Class Member may not sign, on behalf of that Settlement Class Member: (i) an Opt Out request; (ii) a revocation of an Opt Out; (iii) an objection, as set forth in Section 14.3; (iv) a Claim Form, (v) a Derivative Claim Form, or (vi) an Appeals Form.

(b) Where a Settlement Class Member indicates in writing to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator that he or she is individually represented by counsel, the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator will copy the counsel individually representing a Settlement Class Member on any written communications with the Settlement Class Member. Any communications, whether

written or oral, by the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator with counsel individually representing a Settlement Class Member will be deemed to be a communication directly with such individually represented Settlement Class Member.

Section 30.3 Integration. This Settlement Agreement and its exhibits, attachments, and appendices will constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters, conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement, including the Settlement Term Sheet dated August 29, 2013. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

Section 30.4 Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and will not affect the meaning or interpretation of this Settlement Agreement in any manner. Any inconsistency between the headings used in this Settlement Agreement and the text of the Articles and Sections of this Settlement Agreement will be resolved in favor of the text.

Section 30.5 Incorporation of Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, any inconsistency between this Settlement Agreement and any attachments, exhibits, or appendices hereto will be resolved in favor of this Settlement Agreement.

Section 30.6 Amendment. This Settlement Agreement will not be subject to any change, modification, amendment, or addition without the express written consent of Co-Lead Class Counsel, Class Counsel, Subclass Counsel, and Counsel for the NFL Parties, on behalf of all Parties to this Settlement Agreement.

Section 30.7 Mutual Preparation. The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arms' length. Neither the Settlement Class Members nor the NFL Parties, nor any one of them, nor any of their counsel will be considered to be the sole drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement. This Settlement Agreement will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

Section 30.8 Beneficiaries. This Settlement Agreement will be binding upon the Parties and will inure to the benefit of the Settlement Class Members and the Released Parties. All Released Parties who are not the NFL Parties are intended third-party beneficiaries who are entitled to enforce the terms of the Releases and Covenant

Not to Sue set forth in ARTICLE XVIII. No provision in this Settlement Agreement is intended to create any third-party beneficiary to this Settlement Agreement other than the Released Parties. Nothing expressed or implied in this Settlement Agreement is intended to or will be construed to confer upon or give any person or entity other than Class and Subclass Representatives, the Settlement Class Members, Co-Lead Class Counsel, Class Counsel and Subclass Counsel, the NFL Parties, the Released Parties, and Counsel for the NFL Parties, any right or remedy under or by reason of this Settlement Agreement.

Section 30.9 Extensions of Time. Co-Lead Class Counsel and Counsel for the NFL Parties may agree in writing, subject to approval of the Court where required, to reasonable extensions of time to implement the provisions of this Settlement Agreement.

Section 30.10 Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and a facsimile signature will be deemed an original signature for purposes of this Settlement Agreement.

Section 30.11 Good Faith Implementation. Co-Lead Class Counsel and Counsel for the NFL Parties will undertake to implement the terms of this Settlement Agreement in good faith. Before filing any motion or petition in the Court raising a dispute arising out of or related to this Settlement Agreement, Co-Lead Class Counsel and Counsel for the NFL Parties will consult with each other in good faith and certify to the Court that they have conferred in good faith.

Section 30.12 Force Majeure. The Parties will be excused from any failure to perform timely any obligation hereunder to the extent such failure is caused by war, acts of public enemies or terrorists, strikes or other labor disturbances, fires, floods, acts of God, or any causes of the like or different kind beyond the reasonable control of the Parties.

Section 30.13 Waiver. The waiver by any Party of any breach of this Settlement Agreement by another Party will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

Section 30.14 Tax Consequences. No opinion regarding the tax consequences of this Settlement Agreement to any individual Settlement Class Member is being given or will be given by the NFL Parties, Counsel for the NFL Parties, Class and Subclass Representatives, Co-Lead Class Counsel, Class Counsel, or Subclass Counsel, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement Agreement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are his or her sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member. The NFL Parties, Counsel for the NFL Parties, Co-Lead Class Counsel, Class Counsel

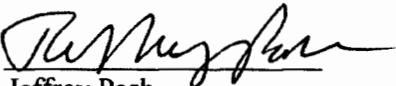
and Subclass Counsel will have no liability or responsibility whatsoever for any such tax consequences resulting from payments under this Settlement Agreement. To the extent required by law, the Claims Administrator will report payments made under the Settlement Agreement to the appropriate authorities.

Section 30.15 Issuance of Notices and Submission of Materials. In any instance in which this Settlement Agreement requires the issuance of any notice regarding registration, a claim or an award, unless specified otherwise in this Settlement Agreement, such notice must be issued by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose to the Settlement Class Member or NFL Parties, which shall be accompanied by an email certifying receipt; or (b) U.S. mail (or its foreign equivalent). In any instance in which this Settlement Agreement requires submission of materials by or on behalf of a Settlement Class Member or the NFL Parties, unless specified otherwise in this Settlement Agreement, such submission must be made by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose; or (b) U.S. mail (or its foreign equivalent; or (c) delivery. Written notice to the Class Representatives or Co-Lead Class Counsel must be given to: Christopher A. Seeger, Seeger Weiss LLP, 77 Water Street, New York, New York 10005; and Sol Weiss, Anapol Schwartz, 1710 Spruce Street, Philadelphia, PA 19103. Written notice to the NFL Parties or Counsel for the NFL Parties must be given to: Jeffrey Pash, Executive Vice President and General Counsel, National Football League, 345 Park Avenue, New York, New York 10154; Anastasia Danias, Senior Vice President and Chief Litigation Officer, National Football League, 345 Park Avenue, New York, New York 10154; and Brad S. Karp, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, or such other person or persons as shall be designated by the Parties.

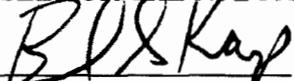
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Agreed to as of this 6th day of January, 2014.

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By: 
Jeffrey Pash
NFL Executive Vice President

COUNSEL FOR THE NFL PARTIES

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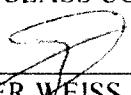
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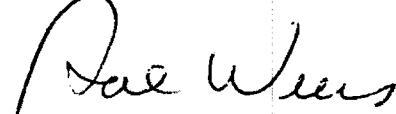
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Exhibit B-1

INJURY DEFINITIONS

DIAGNOSIS FOR BAP SUPPLEMENTAL BENEFITS

Level 1 Neurocognitive Impairment

(a) The following are the diagnostic criteria for Level 1 Neurocognitive Impairment:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a decline in cognitive function;

(ii) Evidence of moderate cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;

(iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating scale Category 0.5 (Questionable) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) Level 1 Neurocognitive Impairment, for the purposes of this Settlement Agreement, may only be diagnosed by Qualified BAP Providers during a BAP baseline assessment examination, with agreement on the diagnosis by the Qualified BAP Providers.

QUALIFYING DIAGNOSES FOR MONETARY AWARDS

1. Level 1.5 Neurocognitive Impairment

- (a) For Retired NFL Football Players diagnosed through the BAP:
- (i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function;
- (ii) Evidence of moderate to severe cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;
- (iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 1.0 (Mild) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and
- (iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.
- (b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician that the Retired NFL Football Player suffers from neurocognitive impairment consistent with the diagnostic criteria for Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia.
- (c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, that the Retired NFL Football Player suffered from neurocognitive impairment consistent with the diagnostic criteria for Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia.

2. Level 2 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function;

(ii) Evidence of severe cognitive decline from a previous level of performance in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial) as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement;

(iii) The Retired NFL Football Player exhibits functional impairment consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 2.0 (Moderate) in the areas of Community Affairs, Home & Hobbies, and Personal Care; and

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician that the Retired NFL Football Player suffers from neurocognitive impairment consistent with the diagnostic criteria for Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, that the Retired NFL Football Player suffered from neurocognitive impairment consistent with the diagnostic criteria for Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia.

3. Alzheimer's Disease

(a) For living Retired NFL Football Players, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician of the specific disease of Alzheimer's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of probable Alzheimer's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5).

(b) For Retired NFL Football Players who died prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a

physician with sufficient qualifications in the field of neurology to make such a diagnosis, that the Retired NFL Football Player suffered from Alzheimer's Disease or probable Alzheimer's Disease consistent with the definition in *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5).

4. Parkinson's Disease

(a) For living Retired NFL Football Players, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician of the specific disease of Parkinson's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or the *Diagnostic and Statistical Manual of Mental Disorders*.

(b) For Retired NFL Football Players who died prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, that the Retired NFL Football Player suffered from Parkinson's Disease.

5. Death with Chronic Traumatic Encephalopathy (CTE)

For Retired NFL Football Players who died prior to the date of the Preliminary Approval and Class Certification Order, a post-mortem diagnosis by a board-certified neuropathologist of CTE.

6. Amyotrophic Lateral Sclerosis (ALS)

(a) For living Retired NFL Football Players, a diagnosis by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician of the specific disease of Amyotrophic Lateral Sclerosis, also known as Lou Gehrig's Disease ("ALS"), as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10).

(b) For Retired NFL Football Players who died prior to the Effective Date, a diagnosis while the Retired NFL Football Player was living by either a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, that the Retired NFL Football Player suffered from ALS.

Exhibit B-2

**BASELINE NEUROPSYCHOLOGICAL TEST BATTERY AND SPECIFIC IMPAIRMENT
CRITERIA FOR RETIRED NFL FOOTBALL PLAYERS**

Section 1. Test Battery

Estimating Premorbid Intellectual Ability	Learning and Memory (6 scores)
ACS Test of Premorbid Functioning (TOPF)	WMS-IV Logical Memory I
Complex Attention/Processing Speed (6 scores)	WMS-IV Logical Memory II
WAIS-IV Digit Span	WMS-IV Verbal Paired Associates I
WAIS-IV Arithmetic	WMS-IV Verbal Paired Associates II
WAIS-IV Letter Number Sequencing	WMS-IV Visual Reproduction I
WAIS-IV Coding	WMS-IV Visual Reproduction II
WAIS-IV Symbol Search	Language (3 scores)
WAIS-IV Cancellation	Boston Naming Test
Executive Functioning (4 scores)	Category Fluency (Animal Naming)
Verbal Fluency (FAS)	BDAE Complex Ideational Material
Trails B	Spatial-Perceptual (3 scores)
Booklet Category Test	WAIS-IV Block Design
WAIS-IV Similarities	WAIS-IV Visual Puzzles
Effort/Performance Validity (8 scores)	WAIS-IV Matrix Reasoning
<i>ACS Effort Scores</i>	Mental Health
ACS-WAIS-IV Reliable Digit Span	MMPI-2RF
ACS-WMS-IV Logical Memory Recognition	Mini International Neuropsychiatric Interview
ACS-WMS-IV Verbal Paired Associates Recognition	
ACS-WMS-IV Visual Reproduction Recognition	
ACS-Word Choice	
<i>Additional Effort Tests</i>	
Test of Memory Malingering (TOMM)	
Medical Symptom Validity Test (MSVT)	

Section 2: Evaluate Effort

The Advanced Clinical Solutions (ACS) Suboptimal Effort measures include five performance validity measures: one external (Word Choice) and four embedded (see list in Section 2). These measures are designed to identify unexpectedly low performance that might reflect deliberately poor effort. Cut-off scores are derived for each measure based on the performance of a large clinical sample that includes cases with significant cognitive impairment. Performing well below the overall clinical sample (e.g., worse than 90% of all clinical cases) suggests that the examinee's performance is atypical. Multiple atypical scores strongly suggest invalid performance. Tables are presented in the ACS manual that provide interpretive criteria for the 5 ACS Suboptimal Effort measures.

In addition to the ACS Suboptimal Effort measures described above, it is also necessary to include two additional tests designed to detect poor effort. These two free-standing tests will include the Test of Memory Malingering (TOMM) and the Medical Symptom Validity Test (MSVT).

If a Retired NFL Football Player fails any two of the seven effort tests (external, embedded, or free-standing), the examiner must assess effort and symptom validity using the method set forth in Slick et al. 1999, and revised in 2013. Using that method, examiners should determine whether any of the following factors influenced test performance.

1. Suboptimal scores on performance validity embedded indicators or tests. The cutoffs for each test should be established based on empirical findings.
2. A pattern of neuropsychological test performance that is markedly discrepant from currently accepted models of normal and abnormal central nervous system (CNS) function. The discrepancy must be consistent with an attempt to exaggerate or fabricate neuropsychological dysfunction (e.g., a patient performs in the severely impaired range on verbal attention measures but in the average range on memory testing; a patient misses items on recognition testing that were consistently provided on previous free recall trials, or misses many easy items when significantly harder items from the same test are passed).
3. Discrepancy between test data and observed behavior. Performance on two or more neuropsychological tests within a domain are discrepant with observed level of cognitive function in a way that suggests exaggeration or fabrication of dysfunction (e.g., a well-educated patient who presents with no significant visual-perceptual deficits or language disturbance in conversational speech performs in the severely impaired range on verbal fluency and confrontation naming tests).
4. Discrepancy between test data and reliable collateral reports. Performance on two or more neuropsychological tests within a domain are discrepant with day-to-day level of cognitive function described by at least one reliable collateral informant in a way that suggests exaggeration or fabrication of dysfunction (e.g., a patient handles all family finances but is unable to perform simple math problems in testing).

5. Discrepancy between test data and documented background history. Improbably poor performance on two or more standardized tests of cognitive function within a specific domain (e.g., memory) that is inconsistent with documented neurological or psychiatric history.
6. Self-reported history is discrepant with documented history. Reported history is markedly discrepant with documented medical or psychosocial history and suggests attempts to exaggerate deficits.
7. Self-reported symptoms are discrepant with known patterns of brain functioning. Reported or endorsed symptoms are improbable in number, pattern, or severity; or markedly inconsistent with expectations for the type or severity of documented medical problems.
8. Self-reported symptoms are discrepant with behavioral observations. Reported symptoms are markedly inconsistent with observed behavior (e.g., a patient complains of severe episodic memory deficits yet has little difficulty remembering names, events, or appointments; a patient complains of severe cognitive deficits yet has little difficulty driving independently and arrives on time for an appointment in an unfamiliar area; a patient complains of severely slowed mentation and concentration problems yet easily follows complex conversation).
9. Self-reported symptoms are discrepant with information obtained from collateral informants. Reported symptoms, history, or observed behavior is inconsistent with information obtained from other informants judged to be adequately reliable. The discrepancy must be consistent with an attempt to exaggerate deficits (e.g., a patient reports severe memory impairment and/or behaves as if severely memory-impaired, but his spouse reports that the patient has minimal memory dysfunction at home).

Notwithstanding a practitioner's determination of sufficient effort in accordance with the foregoing factors, a Retired NFL Football Player's failure on two or more effort tests may result in the Retired NFL Football Player's test results being subjected to independent review, or result in a need for supplemental testing of the Retired NFL Football Player.

Note: Additional information relating to the evaluation of effort and performance validity will be provided in a clinician's interpretation guide.

Section 3. Estimate Premorbid Intellectual Ability

Test	Ability
Test of Premorbid Functioning (TOPF)	Reading
	Reading + Demographic Variables

The Test of Premorbid Functioning (TOPF) provides three models for predicting premorbid functioning: (a) demographics only, (b) TOPF only, and (c) combined demographics and TOPF prediction equations. For each model using demographic data, a simple and complex prediction equation can be selected. In the simple model, only sex, race/ethnicity, and education, are used in predicting premorbid ability. In the complex model, developmental, personal, and more specific demographic data is incorporated into the equations. The clinician should select a model based on the patient's background and his or her current level of reading or language impairment.

Note: It is necessary to estimate premorbid intellectual functioning in order to use the criteria for impairment set out in this document. Estimated premorbid intellectual ability will be assessed and classified as:

- Below Average (estimated IQ below 90);
- Average (estimated IQ between 90 and 109);
- Above Average (estimated IQ above 110).

Section 4. Neuropsychological Test Score Criteria by Domain of Cognitive Functioning

There are 5 domains of cognitive functioning. In each domain, there are several tests that contribute 3, 4, or 6 demographically-adjusted test scores for consideration. Test selection in the domains was based on the availability of demographically-adjusted normative data for Caucasians and African Americans. These domains and scores are set out below.

The basic principle for defining impairment on testing is that there must be a pattern of performance that is approximately 1.5 standard deviations (for Level 1 Impairment), 1.7-1.8 standard deviations (for Level 1.5 Impairment) or 2 standard deviations (for Level 2 Impairment) below the person's expected level of premorbid functioning. Therefore, it is necessary to have more than one low test score in each domain. A user manual will be provided to neuropsychologists setting out the cutoff scores, criteria for identifying impairment in each cognitive domain, and statistical and normative data to support the impairment criteria.

Domain/Test	Ability
Complex Attention/Speed of Processing (6 Scores)	
Digit Span	Attention & Working Memory
Arithmetic	Mental Arithmetic
Letter Number Sequencing	Attention & Working Memory
Coding	Visual-Processing & Clerical Speed
Symbol Search	Visual-Scanning & Processing Speed
Cancellation	Visual-Scanning Speed
Executive Functioning (4 scores)	
Similarities	Verbal Reasoning
Verbal Fluency (FAS)	Phonemic Verbal Fluency
Trails B	Complex Sequencing
Booklet Category Test	Conceptual Reasoning
Learning and Memory (6 scores)	
Logical Memory I	Immediate Memory for Stories
Logical Memory II	Delayed Memory for Stories
Verbal Paired Associates I	Learning Word Pairs
Verbal Paired Associates II	Delayed Memory for Word Pairs
Visual Reproduction I	Immediate Memory for Designs
Visual Reproduction II	Delayed Memory for Designs
Language	
Boston Naming Test	Confrontation Naming
BDAE Complex Ideational Material	Language Comprehension
Category Fluency	Category (Semantic) Fluency
Visual-Perceptual	
Block Design	Spatial Skills & Problem Solving
Visual Puzzles	Visual Perceptual Reasoning
Matrix Reasoning	Visual Perceptual Reasoning

Impairment Criteria: *Below Average Estimated Intellectual Functioning (A1 – E1)*

A1. Complex Attention (6 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 35
2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 2 scores below a T score of 30
3. Level 2 Impairment: 3 or more scores below a T score of 30

B1. Executive Function (4 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

C1. Learning and Memory (6 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 35
2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 2 scores below a T score of 30
3. Level 2 Impairment: 3 or more scores below a T score of 30

D1. Language (3 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 37
2. Level 1.5 Impairment: meet for Level 1 and 2 scores below a T score of 35
3. Level 2 Impairment: 3 or more scores below a T score of 35

E1. Visual-Perceptual (3 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 37
2. Level 1.5 Impairment: meet for Level 1 and 2 scores below a T score of 35
3. Level 2 Impairment: 3 or more scores below a T score of 35

Impairment Criteria: Average Estimated Intellectual Functioning (A2 – E2)

A2. Complex Attention (6 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

B2. Executive Function (4 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

C2. Learning and Memory (6 test scores)

1. Level 1 Impairment: 3 or more scores below a T score of 35
2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

D2. Language (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 37
2. Level 1.5 Impairment: 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 35
3. Level 2 Impairment: 2 or more scores below a T score of 35

E2. Visual-Perceptual (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 37
2. Level 1.5 Impairment: 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 35
3. Level 2 Impairment: 2 or more scores below a T score of 35

Impairment Criteria: *Above Average* Estimated Intellectual Functioning (A3 – E3)

A3. Complex Attention (6 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37
3. Level 2 Impairment: 3 or more scores below a T score of 35

B3. Executive Function (4 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 37
2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 30
3. Level 2 Impairment: 2 or more scores below a T score of 30

C3. Learning and Memory (6 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 35
2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37
3. Level 2 Impairment: 3 or more scores below a T score of 35

D3. Language (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 40
2. Level 1.5 Impairment: 3 scores below at T score of 40; or meet for Level 1 and 1 score below a T score of 37
3. Level 2 Impairment: 2 or more scores below a T score of 37

E3. Visual-Perceptual (3 test scores)

1. Level 1 Impairment: 2 or more scores below a T score of 40
2. Level 1.5 Impairment: 3 scores below at T score of 40; or meet for Level 1 and 1 score below a T score of 37
3. Level 2 Impairment: 2 or more scores below a T score of 37

Section 5: Mental Health Assessment

Test	Symptoms/Functioning	Assessment
MMPI-2RF	Mental Health Assessment	Evaluation of Validity Scales and Configurations; T-Scores for Symptom Domains
Mini International Neuropsychiatric Interview (M.I.N.I. Version 5.0.0)	Semi-structured Psychiatric Interview	Scale Criteria for Various Psychiatric Diagnoses

Exhibit B-3

**MONETARY AWARD GRID
(BY AGE AT TIME OF QUALIFYING DIAGNOSIS)**

Age Group	ALS	Death w/CTE	Parkinson's	Alzheimer's	Level 2	Level 1.5
Under 45	\$5,000,000	\$4,000,000	\$3,500,000	\$3,500,000	\$3,000,000	\$1,500,000
45-49	\$4,500,000	\$3,200,000	\$2,470,000	\$2,300,000	\$1,900,000	\$950,000
50-54	\$4,000,000	\$2,300,000	\$1,900,000	\$1,600,000	\$1,200,000	\$600,000
55-59	\$3,500,000	\$1,400,000	\$1,300,000	\$1,150,000	\$950,000	\$475,000
60-64	\$3,000,000	\$1,200,000	\$1,000,000	\$950,000	\$580,000	\$290,000
65-69	\$2,500,000	\$980,000	\$760,000	\$620,000	\$380,000	\$190,000
70-74	\$1,750,000	\$600,000	\$475,000	\$380,000	\$210,000	\$105,000
75-79	\$1,000,000	\$160,000	\$145,000	\$130,000	\$80,000	\$40,000
80+	\$300,000	\$50,000	\$50,000	\$50,000	\$50,000	\$25,000

The above Monetary Award levels are the average base Monetary Awards for each of the Qualifying Diagnoses for particular age groups, except for the “Under 45” and “80+” rows, which list the maximum and minimum base Monetary Awards, respectively, for those age groups. A Settlement Class Member’s actual base Monetary Award for ages 45-79 may be higher or lower than the average base Monetary Award listed for the Retired NFL Football Player’s age group, depending on the Retired NFL Football Player’s actual age at the time of Qualifying Diagnosis.

Base Monetary Awards are subject to: (a) upward adjustment for inflation, as provided in Section 6.7 of the Settlement Agreement; and (b) downward adjustment based on Offsets (Number of Eligible Seasons, medically diagnosed Stroke occurring prior to a Qualifying Diagnosis, medically diagnosed Traumatic Brain Injury occurring prior to a Qualifying Diagnosis, and non-participation in the BAP by a Retired NFL Football Player in Subclass 1, under the circumstances described in detail in the Settlement Agreement), as provided in Section 6.5(b) of the Settlement Agreement.

Exhibit B-4

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

	No. 2:12-md-02323-AB
IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	MDL No. 2323
	CIVIL ACTION NO: <u>14-29</u>
Kevin Turner and Shawn Wooden, <i>on behalf of themselves and others similarly situated,</i> Plaintiffs,	:
v.	:
National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	:
THIS DOCUMENT RELATES TO: ALL ACTIONS	:

[PROPOSED] FINAL ORDER AND JUDGMENT

On January 6, 2014, Plaintiffs in the above-referenced action (“Action”) filed a Class Action Complaint and on January 6, 2014 a Settlement Agreement was entered into by and among defendants the National Football League (“NFL”) and NFL Properties LLC (“NFL Properties”) (collectively, “NFL Parties”), by and through their attorneys, and the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, by and through Co-Lead Class Counsel, Class Counsel and Subclass Counsel.

On [DATE], the Court entered a Preliminary Approval and Conditional Class Certification Order (“Preliminary Order”) that, among other things: (i) preliminarily approved

the Settlement Agreement; (ii) for purposes of the Settlement Agreement only, conditionally certified the Settlement Class and Subclasses; (iii) appointed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (iv) approved the form and method of notice of the Settlement Agreement to the Settlement Class and Subclasses and directed that appropriate notice of the Settlement Agreement be disseminated; (v) scheduled a Fairness Hearing for final approval of the Settlement Agreement; and (vi) stayed this matter and all Related Lawsuits in this Court and enjoined proposed Settlement Class Members from pursuing Related Lawsuits.

In its Preliminary Order, pursuant to Fed. R. Civ. P. 23(b)(3), the Court defined and certified the Settlement Class as follows:

- (i) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club (“Retired NFL Football Players”); and
- (ii) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and
- (iii) Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player (“Derivative Claimants”).

In its Preliminary Order, pursuant to Fed. R. Civ. P. 23(b)(3), the Court defined and certified the Subclasses as follows:

- (i) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

- (ii) "Subclass 2" means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

Notice was provided to Settlement Class Members pursuant to the Settlement Class Notice Plan approved in the Preliminary Order. (See Settlement Class Notice Plan attached to the Declaration of Katherine Kinsella, Class Notice Agent.) Counsel for the NFL Parties, Co-Lead Class Counsel, Class Counsel and Subclass Counsel worked together with the Settlement Class Notice Agent to fashion a Settlement Class Notice Plan that was tailored to the specific claims and Settlement Class Members of this case. Settlement Class Notice was disseminated to all known Settlement Class Members by U.S. first-class mail by [INSERT DATE]. In addition, a Summary Notice was published in accordance with the Settlement Class Notice Plan and Co-Lead Class Counsel caused to be established an automated telephone system that uses a toll-free number to respond to questions from Settlement Class Members. Co-Lead Class Counsel also caused to be established and maintained a public website that provided information about the proposed Class Action Settlement, including the Settlement Agreement, frequently asked questions, the Preliminary Order, and relevant dates for objecting to the Class Action Settlement, opting out of the Settlement Class, and the date and place of the Fairness Hearing. The website allowed Settlement Class Members to identify themselves so that Settlement Class Notice could be mailed to them. Co-Lead Class Counsel, Class Counsel and Subclass Counsel have established that the Settlement Class Notice Plan was implemented.

[] Settlement Class Members have chosen to be excluded from the Settlement Class by timely filing written requests for exclusion (“Opt Outs”). The Opt Outs are listed at the end of this Order in Exhibit [].

[] Settlement Class Members submitted objections to the Class Action Settlement under the process set by the Preliminary Order.

On [DATE], at [TIME], the Court held the Fairness Hearing to consider whether the Class Action Settlement was fair, reasonable, adequate, and in the best interests of the Settlement Class and Subclasses. At the Fairness Hearing, [NAMES] appeared on behalf of the Class Representatives, Subclass Representatives and Settlement Class Members, and [NAMES] appeared on behalf of the NFL Parties. Additionally, the following individuals also appeared at the Fairness Hearing having timely submitted a Notice of Intention to Appear. [INSERT LIST]

The Court, having heard arguments of counsel for the Parties and of the persons who appeared at the Fairness Hearing [REFERENCE OBJECTIONS, if any], having reviewed all materials submitted, having considered all of the files, records, and proceedings in this Action, and being otherwise fully advised,

HEREBY ORDERS THAT:

1. Jurisdiction. This Court retains continuing and exclusive jurisdiction over the Action, Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, Appeals Judge Panel, Appeals Advisory Panel, Trustee and Settlement Agreement, including its enforcement and interpretation, and all other matters relating to it. This Court also retains continuing jurisdiction over the “qualified settlement funds,” as defined under § 1.468B-1 of the Treasury Regulations

promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986 as amended, created under the Settlement Agreement.

2. Incorporation of Settlement Documents. This Order and Judgment incorporates and makes a part hereof: (a) the Settlement Agreement and exhibits filed with the Court on [DATE], including definitions of the terms used therein and (b) the Settlement Class Notice Plan and the Summary Notice, both of which were filed with the Court on [DATE]. Unless otherwise defined in this Final Order and Judgment, the capitalized terms herein shall have the same meaning as they have in the *In re: National Football League Players' Concussion Injury Litigation*, MDL 2323, Class Action Settlement Agreement dated [DATE].

3. Confirmation of Settlement Class. The provisions of the Preliminary Order that conditionally certified the Settlement Class and Subclasses should be, and hereby are, confirmed in all respects as a final class certification order under Fed. R. Civ. P. 23 for the purposes of implementing the Settlement Agreement. As set forth in the Preliminary Order, the Court finds that, for purposes of effectuating the Settlement Agreement: (a) the Settlement Class Members are so numerous that their joinder is impracticable; (b) there are questions of law and fact common to the Class and Subclasses; (c) the claims of the Class Representatives and Subclass Representatives are typical of the Settlement Class Members and the respective Subclass Members; (d) the Class Representatives and Subclass Representatives and Co-Lead Class Counsel, Class Counsel and Subclass Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and (e) the questions of law or fact common to the Class and Subclasses predominate over any questions affecting only individual Settlement Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Settlement Notice. The Court finds that pursuant to Federal Rule of Civil Procedure 23(c)(2)(B) the dissemination of the Settlement Class Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Preliminary Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members (a) of the effect of the Settlement Agreement (including the Releases provided for therein), (b) that the NFL Parties agreed not to object to a petition for class attorneys' fees and reasonable incurred costs up to \$112.5 million, and that at a later date, to be determined by the Court, Co-Lead Class Counsel, Class Counsel and Subclass Counsel may petition the Court for an award of attorneys' fees and reasonable incurred costs, and Settlement Class Members may comment on or object to the petition, (c) of their right to opt out or object to any aspect of the Settlement Agreement, (d) of their right to revoke an Opt Out prior to the Final Approval Date, and (e) of their right to appear at the Fairness Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement Agreement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause) and other applicable laws and rules. The Notice given by the NFL Parties to state and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

5. Confirmation of Appointment of Class and Subclass Representatives. As set forth in the Preliminary Order, the Court confirms the appointment of Shawn Wooden and Kevin Turner as Class Representatives and Shawn Wooden as Subclass 1 Representative and Kevin Turner as Subclass 2 Representative.

6. Confirmation of Appointment of Co-Lead Class Counsel, Class Counsel and Subclass Counsel. Pursuant to Fed. R. Civ. P. 23(g), the Court confirms the appointment of Christopher A. Seeger and Sol Weiss as Co-Lead Class Counsel, Steven C. Marks and Gene Locks as Class Counsel and Arnold Levin and Dianne M. Nast as Subclass Counsel. Co-Lead Class Counsel, Class Counsel and Subclass Counsel are familiar with the claims in this case and have done work investigating the claims. They have consulted with other counsel in the case and have experience in handling class actions and other complex litigation. They have knowledge of the applicable laws and the resources to commit to the representation of Settlement Class Members and the Settlement Class and Subclasses.

7. Approval of Class Action Settlement. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement Agreement in its entirety (including, without limitation, the NFL Parties' payment obligations, as set forth in Article XXIII of the Settlement Agreement, the Releases provided for therein, and the dismissal with prejudice of claims against the NFL Parties) and finds that the Settlement Agreement is fair, reasonable and adequate. The Court also finds that the Settlement Agreement is fair, reasonable and adequate, and in the best interests of, the Class and Subclass Representatives and all Settlement Class Members, including, without limitation, the members of the Subclasses.

The Parties are ordered to implement, perform and consummate each of the obligations set forth in the Settlement Agreement in accordance with its terms and provisions. All objections to the Settlement Agreement are found to be without merit and are overruled.

8. Dismissal of Class Action Complaint. The Class Action Complaint is hereby dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that Co-Lead Class Counsel's, Class Counsel's and Subclass Counsel's motion for an award of class attorneys' fees and reasonable incurred costs, as contemplated by the Parties in Section 21.1 of the Settlement Agreement, will be made at an appropriate time to be determined by the Court.

9. Dismissal of Released Claims. As set forth in Article XVIII of the Settlement Agreement, the Settlement Class, the Class and Subclass Representatives and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), have waived and released, forever discharged and held harmless the Released Parties, and each of them:

- a. Of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits ("Claims"), including, without limitation, the Claims identified in Section 18.1(a)(i)-(viii) of the Settlement Agreement.

- b. Of and from any and all Claims, including unknown Claims, arising from, relating to, or resulting from the reporting, transmittal of information, or communications between or among the NFL Parties, Counsel for the NFL Parties, the Special Master, Claims Administrator, Lien Resolution Administrator, any Governmental Payor and/or Medicare Part C or Part D Program sponsor, regarding any claim for benefits under this Settlement Agreement, including any consequences in the event that this Settlement Agreement impacts, limits, or precludes any Settlement Class Member's right to benefits under Social Security or from any Governmental Payor or Medicare Part C or Part D Program sponsor.
- c. Of and from any and all Claims, including unknown Claims, pursuant to the MSP Laws, or other similar causes of action, arising from, relating to, or resulting from the failure or alleged failure of any of the Released Parties to provide for a primary payment or appropriate reimbursement to a Governmental Payor or Medicare Part C or Part D Program sponsor with a Lien in connection with claims for medical items, services, and/or prescription drugs provided in connection with compensation or benefits claimed or received by a Settlement Class Member pursuant to this Settlement Agreement.
- d. And the Special Master, BAP Administrator, Claims Administrator, and their respective officers, directors, and employees, of and from any and all Claims, including unknown Claims, arising from, relating to, or resulting from their participation, if any, in the BAP, including, but not limited to, Claims for negligence, medical malpractice, wrongful or delayed diagnosis, personal injury, bodily injury (including disease, trauma, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life), or death arising from, relating to, or resulting from such participation.

Accordingly, the Court hereby orders the dismissal with prejudice of all Released Claims by the Releasors against the Released Parties pending in the Court and without further costs, including claims for interest, penalties, costs and attorneys' fees. All Releasors with Released Claims pending in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, against the Released Parties are ordered to promptly dismiss with prejudice all such Released Claims, and without further costs, including

claims for interest, penalties, costs, and attorneys' fees. This Settlement Agreement will be the exclusive remedy for any and all Released Claims by or on behalf of any and all Releasors against any of the Released Parties, and no Releasor shall recover, directly or indirectly, any sums from any Released Parties for Released Claims other than those received for Released Claims under the terms of the Settlement Agreement, if any. However, nothing contained in the Settlement Agreement, including the Release and Covenant Not to Sue provisions in Article XVIII, affects the rights of Settlement Class Members to pursue claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

10. Dismissal of Related Lawsuits. All Related Lawsuits pending in the Court are hereby dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees. All Releasors with Related Lawsuits pending in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, are ordered to promptly dismiss with prejudice such Related Lawsuits, and without further costs, including claims for interest, penalties, costs, and attorneys' fees.

11. Covenant Not to Sue. Consistent with Section 18.4 of the Settlement Agreement, the Class and Subclass Representatives, each Settlement Class Member, and the Settlement Class, on behalf of the Releasors, and each of them, are hereby barred, enjoined and restrained from, at any time, continuing to prosecute, commencing, filing, initiating, instituting, causing to be instituted, assisting in instituting, or permitting to be instituted on their, his, her, or its behalf, or on behalf of any other individual or entity, any proceeding: (i) alleging or asserting any of his or her respective Released Claims against the Released Parties in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, including, without limitation, the Claims set forth in Article XVIII of the Settlement Agreement; or (ii) challenging

the validity of the Releases. To the extent any such proceeding exists in any court, tribunal or other forum as of the Effective Date, the Releasors are ordered to withdraw and seek dismissal with prejudice of such proceeding forthwith.

12. Complete Bar Order and Judgment Reduction. It is ordered that any person or entity, other than Riddell (as defined in the Settlement Agreement), that becomes liable to any Releasor, or to any other alleged tortfeasor, co-tortfeasor, co-conspirator or co-obligor, by reason of judgment or settlement, for any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any facts in connection with this Action or any Related Lawsuit (collectively, the "Non-Settling Defendants"), are hereby permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against the Released Parties that seeks to recover from the Released Parties any part of any judgment entered against the Non-Settling Defendants and/or any settlement reached with any of the Non-Settling Defendants, in connection with any claims that are or could have been asserted against the Non-Settling Defendants in this Action or in any Related Lawsuit or that arise out of or relate to any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any facts in connection with this Action or any Related Lawsuit, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any Related Lawsuit, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

It is further ordered that the Released Parties are hereby permanently BARRED, ENJOINED AND RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against any of the Non-Settling Defendants that seeks to recover any part of the NFL Parties' payment obligations as set forth in Article XXIII of the Settlement Agreement, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any Related Lawsuit, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

It is further ordered that any judgment or award obtained by the Releasors against any such Non-Settling Defendant shall be reduced by the amount or percentage, if any, necessary under applicable law to relieve the Released Parties of all liability to such Non-Settling Defendants on claims barred pursuant to this Paragraph 12. Such judgment reduction, partial or complete release, settlement credit, relief, or setoff, if any, shall be in an amount or percentage sufficient under applicable law to compensate such Non-Settling Defendants for the loss of any such barred claims pursuant to this Paragraph 12 against the Released Parties.

13. No Release for Insurance Coverage. Notwithstanding anything to the contrary in this Final Order and Judgment, this Final Order and Judgment and the Settlement Agreement are not intended to and do not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(aaaa)(i)-(ii) of the Settlement Agreement.

14. Riddell. As set forth in the Settlement Agreement, it is hereby ordered that, with respect to any litigation by the Releasors against Riddell, if a verdict in a Releasor's favor results in verdict or judgment for contribution or indemnity against any of the Released Parties, the Releasors shall not enforce their right to collect this verdict or judgment to the extent that such enforcement creates liability against such Released Parties. In such event, the Releasors shall reduce their claim or agree to a judgment reduction or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability against the Released Parties or any Other Party claiming contribution or indemnity.

15. Confirmation of Administrative Appointments. As set forth in the Preliminary Order, the Court confirms the appointment of The Garretson Resolution Group, Inc. as the BAP Administrator, BrownGreer PLC as the Claims Administrator, The Garretson Resolution Group, Inc. as the Liens Resolution Administrator and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed. Pursuant to Federal Rule of Civil Procedure 53 and the inherent authority of the Court, the Court [further extends the appointment of Mr. Perry Golkin as Special Master first made in this Court's Order Appointing Special Master, dated December 16, 2013, to perform the duties of the Special Master as set forth in the Settlement Agreement for a five-year term] [appoints _____ as Special Master to perform the duties of the Special Master as set forth in the Settlement Agreement for a five-year term].

16. No Admission. This Final Order and Judgment, the Settlement Agreement, and the documents relating thereto, and any actions taken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of the Settlement Agreement: (a) do not and shall not, in any event, constitute, or be construed as, an admission of any liability or

wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member in this or any other action or proceeding; and (b) shall not, in any way, be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Co-Lead Class Counsel, Class Counsel, Subclass Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member, of any claims, causes of action, or remedies. This Paragraph shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

17. Modification of the Settlement Agreement. Without further approval from the Court, Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties, on behalf of all Parties, are hereby authorized to agree to and adopt, by the express written consent of each Party, such amendments and modifications of the Settlement Agreement, or any exhibits attached thereto, to effectuate the Settlement Agreement that: (i) are not

materially inconsistent with this Final Order and Judgment; and (ii) do not materially limit the rights of Class Members in connection with the Class Action Settlement. Without further order of the Court, Co-Lead Class Counsel, Class Counsel, Subclass Counsel and Counsel for the NFL Parties, on behalf of all Parties, may agree, by the express written consent of each Party, to reasonable extensions of time to carry out any provisions of the Settlement Agreement.

18. Binding Effect. The terms of the Settlement Agreement and of this Final Order and Judgment shall be forever binding on the Parties (regardless of whether or not any individual Settlement Class Member receives payment of a Monetary Award or Derivative Claimant Award or participates in a BAP baseline assessment examination), as well as their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns. The Opt Outs listed in Exhibit [] hereto are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Settlement Agreement or this Final Order and Judgment.

19. Termination. If the Settlement Agreement is terminated as provided in Article XVI of the Settlement Agreement, then this Final Order and Judgment (and any orders of the Court relating to the Settlement Agreement) shall be null and void and be of no further force or effect, except as otherwise provided by the Settlement Agreement, and any unspent and uncommitted monies in the Funds will revert to, and shall be paid to, the NFL Parties within ten (10) days.

20. Entry of Final Judgment. There is no just reason to delay the entry of this Final Order and Judgment as a final judgment in this Action. Accordingly, the Clerk of Court is hereby directed, in accordance with this Final Order and Judgment and pursuant to Fed. R. Civ. P. 54, to: (i) enter final judgment dismissing with prejudice this Action and any Related Lawsuits

in this Court in which Released Parties (or any of them) are the only defendants, and (ii) enter final judgment dismissing with prejudice all Released Claims asserted against Released Parties (or any of them) in any other Related Lawsuits in this Court in which there are named defendants other than Released Parties.

SO ORDERED this _____ day of _____, 2014.

Anita B. Brody
United States District Court Judge

Exhibit B-5

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

\$760 Million NFL Concussion Litigation Settlement

Retired NFL Football Players May Be Eligible for Money and Medical Benefits

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The National Football League (“NFL”) and NFL Properties LLC (collectively, “NFL Parties”) have agreed to a \$760 million Settlement of a class action lawsuit seeking medical monitoring and compensation for brain injuries allegedly caused by head impacts experienced in NFL football. The NFL Parties deny that they did anything wrong.
- The Settlement includes all retired players of the NFL, the American Football League (“AFL”) that merged with the NFL, the World League of American Football, NFL Europe League, and NFL Europa League, as well as immediate family members of retired players and legal representatives of incapacitated, incompetent or deceased retired players.
- The Settlement will provide eligible retired players with:
 - Baseline neuropsychological and neurological exams to determine if retired players are: a) currently suffering from any neurocognitive impairment, including impairment serious enough for compensation, and b) eligible for additional testing and/or treatment (\$75 million);
 - Monetary awards for diagnoses of ALS (Lou Gehrig’s disease), Parkinson’s Disease, Alzheimer’s Disease, early and moderate Dementia and certain cases of chronic traumatic encephalopathy (CTE) (a neuropathological finding) diagnosed after death (\$675 million); and
 - Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives (\$10 million).
- To get money, proof that injuries were caused by playing NFL football is not required.
- **Settlement Class Members must register to get benefits. Sign up at the website for notification of the registration date.**
- Your legal rights are affected even if you do nothing. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
STAY IN THE SETTLEMENT CLASS	You do not need to do anything to be included in the Settlement Class. However, once the Court approves the Settlement, you will be bound by the terms and releases contained in the Settlement. There will be later notice to explain when and how to register for Settlement benefits (<i>see Question 26</i>).
ASK TO BE EXCLUDED	You will get no benefits from the Settlement if you exclude yourself (“opt-out”) from the Settlement. Excluding yourself is the only option that allows you to participate in any other lawsuit against the NFL Parties about the claims in this case (<i>see Question 30</i>).
OBJECT	Write to the Court if you do not like the Settlement (<i>see Question 35</i>). Ask to speak in Court about the fairness of the Settlement at the final approval hearing (<i>see Question 39</i>).

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- The Court in charge of this case still has to decide whether to approve the Settlement.
- **This Notice is only a summary of the Settlement Agreement and your rights. You are encouraged to carefully review the complete Settlement Agreement at www.NFLConcussionSettlement.com.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT www.NFLConcussionSettlement.com

What This Notice Contains

CHAPTER 1: INTRODUCTION

BASIC INFORMATION.....	Page 5
1. Why is this Notice being provided?	
2. What is the litigation about?	
3. What is a class action?	
4. Why is there a Settlement?	
5. What are the benefits of the Settlement?	

WHO IS PART OF THE SETTLEMENT?	Page 7
6. Who is included in the Settlement Class?	
7. What players are not included in the Settlement Class?	
8. What if I am not sure whether I am included in the Settlement Class?	
9. What are the different levels of neurocognitive impairment?	
10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?	

CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM.....	Page 9
11. What is the Baseline Assessment Program (“BAP”)?	
12. Why should I get a BAP baseline examination?	
13. How do I schedule a baseline assessment examination and where can I get it done?	

MONETARY AWARDS.....	Page 10
14. What diagnoses qualify for monetary awards?	
15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?	
16. How much money will I receive?	
17. How does the age of the retired player at the time of first diagnosis affect his monetary award?	
18. How does the number of seasons a retired player played affect his monetary award?	
19. How do prior strokes or brain injuries of a retired player affect his monetary award?	
20. How is a retired player’s monetary award affected if he does not participate in the BAP program?	
21. Can I receive a monetary award even though the retired player is dead?	
22. Will this Settlement affect my participation in NFL or NFLPA related benefits programs?	
23. Will this Settlement prevent me from bringing workers’ compensation claims?	

EDUCATION FUND.....	Page 14
24. What type of education programs are supported by the Settlement?	

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT.....	Page 14
25. What am I giving up to stay in the Settlement Class?	

HOW TO GET BENEFITS.....	Page 15
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QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

26. How do I get Settlement benefits?
27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?
28. Can I re-apply for compensation if my claim is denied?
29. Can I appeal the determination of my monetary award claim?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....Page 15

30. How do I get out of the Settlement?
31. If I do not exclude myself, can I sue the NFL Parties for the same thing later?
32. If I exclude myself, can I still get benefits from this Settlement?

THE LAWYERS REPRESENTING YOU.....Page 16

33. Do I have a lawyer in the case?
34. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....Page 17

35. How do I tell the Court if I do not like the Settlement?
36. What is the difference between objecting to the Settlement and excluding myself?

THE COURT'S FAIRNESS HEARING.....Page 18

37. When and where will the Court decide whether to approve the Settlement?
38. Do I have to attend the hearing?
39. May I speak at the hearing?

GETTING MORE INFORMATION.....Page 19

40. How do I get more information?

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 1: INTRODUCTION

BASIC INFORMATION

1. Why is this Notice being provided?

The Court in charge of this case authorized this Notice because you have a right to know about the proposed Settlement of this lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This Notice summarizes the Settlement and explains your legal rights and options.

Judge Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania is overseeing this case. The case is known as *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323. The people who sued are called the "Plaintiffs." The National Football League and NFL Properties LLC are called the "NFL Defendants."

The Settlement may affect your rights if you are: (a) a retired player of the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League, (b) an authorized representative of a deceased or legally incapacitated or incompetent retired player of those leagues, or (c) an individual with a close legal relationship with a retired player of those leagues, such as a spouse, parent or child.

2. What is the litigation about?

The Plaintiffs claim that retired players experienced head trauma during their NFL football playing careers that resulted in brain injuries, which have caused or may cause them long-term neurological problems. The Plaintiffs accuse the NFL Parties of being aware of the evidence and the risks associated with repetitive traumatic brain injuries but failing to warn and protect the players against the long-term risks, and ignoring and concealing this information from the players. The NFL Parties deny the claims in the litigation.

3. What is a class action?

In a class action, one or more people, the named plaintiffs (who are also called proposed "class representatives") sue on behalf of themselves and other people with similar claims. All of these people together are the proposed "class" or "class members." When a class action is settled, one court resolves the issues for all class members (in the settlement context, "settlement class members"), except for those who exclude themselves from the settlement. In this case, the proposed class representatives are Kevin Turner and Shawn Wooden. Excluding yourself means that you will not receive any benefits from the Settlement. The process for excluding yourself is described in Question 30 of this Notice.

4. Why is there a Settlement?

After extensive settlement negotiations mediated by retired United States District Court Judge Layn Phillips, the Plaintiffs and the NFL Parties agreed to the Settlement.

A settlement is an agreement between a plaintiff and a defendant to resolve a lawsuit. Settlements conclude litigation without the court or a jury ruling in favor of the plaintiff or the defendant. A settlement allows the parties to avoid the cost and risk of a trial, as well as the delays of litigation.

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If the Court approves this Settlement, the claims of all persons affected (*see* Question 6) and the litigation between these persons and the NFL Parties are over. The persons affected by the Settlement are eligible for the benefits summarized in this Notice and the NFL Parties will no longer be legally responsible to defend against the claims made in this litigation.

The Court has not and will not decide in favor of the retired players or the other persons affected by the Settlement or the NFL Parties, and by reviewing this Settlement the Court is not making and will not make any findings that any law was broken or that the NFL Parties did anything wrong.

The proposed Class Representatives and their lawyers (“Co-Lead Class Counsel,” “Class Counsel,” and “Subclass Counsel,” *see* Question 33) believe that the proposed Settlement is best for everyone who is affected. The factors that Co-Lead Class Counsel, Class Counsel, and Subclass Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal issues that are yet to be determined by the Court. Co-Lead Class Counsel, Class Counsel and Subclass Counsel balanced these and other substantial risks in determining that the Settlement is fair, reasonable and adequate in light of all circumstances and in the best interests of the Settlement Class Members.

The Settlement Agreement is available at www.NFLConcussionSettlement.com.

5. What are the benefits of the Settlement?

Under the Settlement, the NFL Parties will pay \$760 million to fund:

- Baseline neuropsychological and neurological examinations for eligible retired players, and additional medical testing, counseling and/or treatment if they are diagnosed with moderate cognitive impairment during the baseline examinations (up to \$75 million, “Baseline Assessment Program”) (*see* Questions 11-13);
- Monetary awards for diagnoses of ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) and Death with CTE prior to [Date of Preliminary Approval Order] (\$675 million, “Monetary Award Fund”) (*see* Questions 14-21); and
- Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives. (\$10 million) (*see* Question 24).

In addition, the NFL Parties will pay the cost of notice (up to \$4 million) and half of the compensation for a Special Master to assist the Court in overseeing aspects of the Settlement, for the first 5 years of the Settlement. The Court may extend the term for the Special Master. Other administrative costs and expenses will be paid out of the Monetary Award Fund, except for Baseline Assessment Program costs and expenses, which will be paid out of the Baseline Assessment Program Fund.

In the event the Monetary Award Fund is insufficient to pay all approved monetary claims, the NFL Parties have agreed to contribute up to an additional \$37.5 million, subject to Court approval. Based on extensive consultation with economic and medical experts, Co-Lead Class Counsel, Class Counsel, and Subclass Counsel believe the funding will be sufficient to pay all eligible monetary claims.

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The details of the Settlement benefits are in the Settlement Agreement, which is available at www.NFLConcussionSettlement.com.

Note: The Baseline Assessment Program and Monetary Award Fund are completely independent of the NFL Parties and any benefit programs that have been created between the NFL and the NFL Players Association. The NFL Parties are not involved in determining the validity of claims.

WHO IS PART OF THE SETTLEMENT?

You need to decide whether you are included in the Settlement.

6. Who is included in the Settlement Class?

This Settlement Class includes three types of people:

Retired NFL Football Players: Prior to [Date of Preliminary Approval Order], you (1) have retired, formally or informally, from playing professional football with the NFL or any Member Club, including AFL, World League of American Football, NFL Europe League, and NFL Europa League players, or (2) were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and no longer are under contract to a Member Club and are not seeking active employment as a player with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

Representative Claimants: An authorized representative, ordered by a court or other official of competent jurisdiction under applicable state law, of a deceased or legally incapacitated or incompetent Retired NFL Football Player.

Derivative Claimants: A spouse, parent, dependent child, or any other person who properly under applicable state law asserts the right to sue independently or derivatively by reason of his or her relationship with a living or deceased Retired NFL Football Player. (For example, a spouse asserting the right to sue due to the injury of a husband who is a Retired NFL Football Player.)

The Settlement recognizes two separate groups (“Subclasses”) of Settlement Class Members based on the Retired NFL Football Player’s injury status as of [Date of Preliminary Approval Order]:

- **Subclass 1** includes Retired NFL Football Players who were not diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) or Death with CTE prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants.
- **Subclass 2** includes:
 - (a) Retired NFL Football Players who were diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants; and

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- (b) Representative Claimants of deceased Retired NFL Football Players who were diagnosed with ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to death or who died prior to [Date of Preliminary Approval Order] and received a diagnosis of Death with CTE.

7. What players are included in the Settlement Class?

The Settlement Class does not include: (a) current NFL players, and (b) people who tried out for NFL or AFL Member Clubs, or World League of American Football, NFL Europe League or NFL Europa League teams, but did not make it onto preseason, regular season or postseason rosters, or practice squads, developmental squads or taxi squads.

8. What if I am not sure whether I am included in the Settlement Class?

If you are not sure whether you are included in the Settlement Class, you may call 1-800-000-0000 with questions or visit www.NFLConcussionSettlement.com. You may also write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000. You may also consult with your own attorney.

9. What are the different levels of neurocognitive impairment?

Various levels of neurocognitive impairment are used in this Notice. More details can be found in the Injury Definitions, which are available at www.NFLConcussionSettlement.com or by calling 1-800-000-0000.

- **Level 1 Neurocognitive Impairment** covers ***moderate cognitive impairment***. It will be established in part with evidence of decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- **Level 1.5 Neurocognitive Impairment** covers ***early Dementia***. It will be established in part with evidence of moderate to severe cognitive decline, which includes a decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.
- **Level 2 Neurocognitive Impairment** covers ***moderate Dementia***. It will be established in part with evidence of severe decline in performance in at least two areas subject to clinical evaluative testing (such as complex attention, executive function, learning, memory, language and perceptual skill) and related functional impairment.

If neurocognitive impairment is temporary and only occurs with delirium, or as a result of substance abuse or medicinal side effects, it is not covered by the Settlement.

10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?

No. A retired player can be a Settlement Class Member regardless of whether he is vested due to credited seasons or total and permanent disability under the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

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CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM

11. What is the Baseline Assessment Program (“BAP”)?

All living retired players who have earned at least one-half of an Eligible Season (*see* Question 18), who do not exclude themselves from the Settlement (*see* Question 30), and who timely register to participate in the Settlement (*see* Question 26) may participate in the Baseline Assessment Program (“BAP”).

The BAP will provide baseline neuropsychological and neurological assessment examinations to determine whether retired players are currently suffering from cognitive impairment. Retired players will have from two to ten years, depending on their age as of the date the Settlement is finally approved and any appeals are fully resolved, to have a baseline examination conducted through a nationwide network of qualified and independent medical providers.

- Retired players 43 or older as of the date the Settlement goes into effect will need to have a baseline examination within two years of the start of the program.
- Retired players under the age of 43 as of the date the Settlement goes into effect will need to have a baseline examination within 10 years, or before they turn 45, whichever comes sooner.

Retired players who are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment) are eligible to receive further medical testing and/or treatment (including counseling and pharmaceuticals) for that condition for the ten-year term of the BAP or five years from diagnosis, whichever is longer.

Settlement Class Members who participate in the BAP will be encouraged to provide their confidential medical records for use in research into cognitive impairment and safety and injury prevention with respect to football players.

Although all retired players are encouraged to take advantage of the BAP and receive a baseline examination, you do not need to participate in the BAP to receive a monetary award, but your award may be reduced by 10% if you do not participate in the BAP, as explained in more detail in Question 20.

12. Why should I get a BAP baseline examination?

Getting a BAP baseline examination will be beneficial to you and your family. It will determine whether you have any cognitive impairment, and if you are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment), you are eligible to receive further medical testing and/or treatment for that condition. In addition, whether or not you have any cognitive impairment today, the results of the BAP baseline examination can be used as a comparison to measure any subsequent deterioration of your cognitive condition over the course of your life. Participants also will be examined by at least two experts during the BAP baseline examinations, a neuropsychologist and a neurologist, and the retired player and/or

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his family members will have the opportunity to ask questions relating to any cognitive impairment during those examinations.

Participation in the BAP does not prevent you from filing a claim for a monetary award. For the next 65 years, retired players will be eligible for compensation paid from the Monetary Award Fund if they develop a Qualifying Diagnosis (*see Question 14*). Participation in the BAP also will help ensure that, to the extent you receive a Qualifying Diagnosis in the future, you receive the maximum monetary award to which you are entitled (*see Question 20*).

13. How do I schedule a baseline assessment examination and where can I get it done?

You need to register for Settlement benefits before you can get a baseline assessment examination. Registration will not be available until after the Court grants final approval to the Settlement and any appeals are fully resolved. **You can sign-up at www.NFLConcussionSettlement.com or by calling 1-800-000-0000 to receive additional notice about registration when it becomes available.**

The BAP Administrator will send notice to those retired players determined during registration to be eligible for the BAP, explaining how to arrange for an initial baseline assessment examination. The BAP will use a nationwide network of qualified and independent medical providers who will provide both the initial baseline assessment as well as any further testing and/or treatment. The BAP Administrator, which will be appointed by the Court, will establish the network of medical providers.

MONETARY AWARDS

14. What diagnoses qualify for monetary awards?

Monetary awards are available for the diagnosis of ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia), or Death with CTE (the "Qualifying Diagnoses"). A Qualifying Diagnosis can occur at any time until the end of the 65-year term of the Monetary Award Fund.

If a retired player receives a monetary award based on a Qualifying Diagnosis, and later is diagnosed with a different Qualifying Diagnosis that entitles him to a larger monetary award than his previous award, he will be eligible for an increase in compensation.

15. Do I need to prove that playing professional football caused my Qualifying Diagnosis?

No. You do not need to prove that a Qualifying Diagnosis was caused by playing professional football or that you experienced head injuries in the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League in order to receive a monetary award. The fact that a retired player receives a Qualifying Diagnosis is sufficient to be eligible for a monetary award.

You also do not need to exclude the possibility that the Qualifying Diagnosis was caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.

16. How much money will I receive?

The amount of money you will receive depends on the retired player's:

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- Specific Qualifying Diagnosis,
- Age at the time he was diagnosed (*see Question 17*),
- Number of seasons played or practiced in the NFL or the AFL (*see Question 18*),
- Diagnosis of a prior stroke or traumatic brain injury (*see Question 19*),
- Participation in a baseline assessment exam (*see Question 20*), and
- Whether there are any legally enforceable liens on your award.

The table below lists the maximum amount of money available for each Qualifying Diagnosis before any adjustments are made.

QUALIFYING DIAGNOSIS	MAXIMUM AWARD AVAILABLE
Amyotrophic lateral sclerosis (ALS)	\$5 million
Death with CTE (diagnosed after death)	\$4 million
Parkinson's Disease	\$3.5 million
Alzheimer's Disease	\$3.5 million
Level 2 Neurocognitive Impairment (<i>i.e.</i> , moderate Dementia)	\$3 million
Level 1.5 Neurocognitive Impairment (<i>i.e.</i> , early Dementia)	\$1.5 million

Monetary awards may be increased up to 2.5% per year during the 65-year Monetary Award Fund term for inflation.

To receive the maximum amount outlined in the table, a retired player must have played for at least five Eligible Seasons (*see Question 18*) and have been diagnosed when younger than 45 years old.

Derivative Claimants are eligible to be compensated from the monetary award of the retired player with whom they have a close relationship in an amount of 1% of that award. If there are multiple Derivative Claimants for the same retired player, the 1% award will be divided among the Derivative Claimants according to the law where the retired player (or his Representative Claimant, if any) resides.

17. How does the age of the retired player at the time of his diagnosis affect his monetary award?

Awards are reduced for retired players who were 45 or older when diagnosed. The younger a retired player is at the time of diagnosis, the greater the award he will receive. Setting aside the other downward adjustments to monetary awards, the table below provides:

- The average award for people diagnosed between the ages of 45-49; and
- The amount of the award for those under age 45 and over 79.

The actual amount will be determined based on each retired player's actual age at the time of diagnosis and on other potential adjustments.

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AGE AT DIAGNOSIS	ALS	DEATH W/CTE	PARKINSON'S	ALZHEIMER'S	LEVEL 2	LEVEL 1.5
Under 45	\$5,000,000	\$4,000,000	\$3,500,000	\$3,500,000	\$3,000,000	\$1,500,000
45 - 49	\$4,500,000	\$3,200,000	\$2,470,000	\$2,300,000	\$1,900,000	\$950,000
50 - 54	\$4,000,000	\$2,300,000	\$1,900,000	\$1,600,000	\$1,200,000	\$600,000
55 - 59	\$3,500,000	\$1,400,000	\$1,300,000	\$1,150,000	\$950,000	\$475,000
60 - 64	\$3,000,000	\$1,200,000	\$1,000,000	\$950,000	\$580,000	\$290,000
65 - 69	\$2,500,000	\$980,000	\$760,000	\$620,000	\$380,000	\$190,000
70 - 74	\$1,750,000	\$600,000	\$475,000	\$380,000	\$210,000	\$105,000
75 - 79	\$1,000,000	\$160,000	\$145,000	\$130,000	\$80,000	\$40,000
80+	\$300,000	\$50,000	\$50,000	\$50,000	\$50,000	\$25,000

Note: The age of the retired player at diagnosis (not the age when applying for a monetary award) is used to determine the monetary amount awarded.

18. How does the number of seasons a retired player played affect his monetary award?

Awards are reduced for retired players who played less than five “Eligible Seasons.” The Settlement uses the term “Eligible Season” to count the seasons in which a retired player played or practiced in the NFL or AFL. A retired player earns an Eligible Season for:

- Each season where he was on an NFL or AFL Member Club’s “Active List” for either three or more regular season or postseason games, or
- Where he was on an Active List for one or more regular or postseason games and then spent two regular or postseason games on an injured reserve list or inactive list due to a concussion or head injury.
- A retired player also earns one-half of an Eligible Season for each season where he was on an NFL or AFL Member Club’s practice, developmental, or taxi squad for at least eight games, but did not otherwise earn an Eligible Season.

The “Active List” means the list of all players physically present, eligible and under contract to play for an NFL or AFL Member Club on a particular game day within any applicable roster or squad limits in the applicable NFL or AFL Constitution and Bylaws.

Time spent playing or practicing in the World League of American Football, NFL Europe League, and NFL Europa League does not count towards an Eligible Season.

The table below lists the reductions to a retired player’s (or his Representative Claimant’s) monetary award if the retired player has less than five Eligible Seasons. To determine the total number of Eligible Seasons

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credited to a retired player, add together all of the earned Eligible Seasons and half Eligible Seasons. For example, if a retired player earned two Eligible Seasons and three half Eligible Seasons, he will be credited with 3.5 Eligible Seasons.

NUMBER OF ELIGIBLE SEASONS	PERCENTAGE OF REDUCTION
4.5	10%
4	20%
3.5	30%
3	40%
2.5	50%
2	60%
1.5	70%
1	80%
.5	90%
0	97.5%

19. How do prior strokes or traumatic brain injuries of a retired player affect his monetary award?

It depends. A retired player's monetary award (or his Representative Claimant monetary award) will be reduced by 75% if he experienced a medically diagnosed stroke that occurred:

- Before receiving a Qualifying Diagnosis, or
- A severe traumatic brain injury unrelated to NFL football that occurred during or after the time the retired player played NFL football but before he received a Qualifying Diagnosis.

The award will not be reduced if the retired player (or his Representative Claimant) can show by clear and convincing evidence that the stroke or traumatic brain injury is not related to the Qualifying Diagnosis.

20. How is a retired player's monetary award affected if he does not participate in the BAP program?

It depends on when the retired player receives his Qualifying Diagnosis and the nature of the diagnosis. There is a 10% reduction to the monetary award if the retired player does not participate in the BAP and:

- Did not receive a Qualifying Diagnosis prior to [Date of Preliminary Approval Order], and
- Receives a Qualifying Diagnosis (other than ALS) after his deadline to receive a BAP baseline assessment examination.

21. Can I receive a monetary award even though the retired player is dead?

Yes. Representative Claimants for deceased retired players with a Qualifying Diagnoses will be eligible to receive monetary awards. If the deceased retired player died before January 1, 2006, however, the Representative Claimant will only receive a monetary award if the Court determines that a wrongful death or survival claim is allowed under applicable state law.

Derivative Claimants also will be eligible for a total award of 1% of the monetary award that the Representative Claimant for the deceased retired player receives (see Question 16).

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

[22. Will this Settlement affect my participation in NFL or NFLPA-related benefits programs?]

No. The Settlement benefits are completely independent of any benefits programs that have been created by or between the NFL and the NFL Players Association. This includes the 88 Plan (Article 58 of the 2011 Collective Bargaining Agreement) and the Neuro-Cognitive Disability Benefit (Article 65 of the 2011 Collective Bargaining Agreement).

Note: The Settlement ensures that a retired player who has signed, or will sign, a release as part of his Neuro-Cognitive Disability Benefit application, will not be denied Settlement benefits.

[23. Will this Settlement prevent me from bringing workers' compensation claims?]

Claims for workers' compensation will not be released by this Settlement.

EDUCATION FUND

[24. What type of education programs are supported by the Settlement?]

The Settlement will provide \$10 million in funding to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL's medical and disability programs and other educational programs and initiatives.

Retired players will be able to actively participate in such initiatives if they desire.

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT

[25. What am I giving up to stay in the Settlement Class?]

Unless you exclude yourself from the Settlement, you cannot sue the NFL Parties, the Member Clubs, or related individuals and entities, or be part of any other lawsuit against the NFL Parties about the issues in this case. This means you give up your right to continue to litigate any claims related to this Settlement, or file new claims, in any court or in any proceeding at any time. You also are promising not to sue the National Collegiate Athletic Association or other collegiate, amateur or youth football organizations and entities for your cognitive injuries if you receive a monetary award under this Settlement. **However, the Settlement does not release any claims for workers' compensation (see Question 23) or claims alleging entitlement to NFL medical and disability benefits available under the Collective Bargaining Agreement.**

Please note that certain Plaintiffs also sued the football helmet manufacturer Riddell and certain related entities (specifically, Riddell, Inc., Riddell Sports Group Inc., All American Sports Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG Holdings Corp.). **They are not parties to this Settlement and claims against them are not released by this Settlement.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Article XVIII of the Settlement Agreement contains the complete text and details of what Settlement Class Members give up unless they exclude themselves from the Settlement, so please read it carefully. The Settlement Agreement is available at www.NFLConcussionSettlement.com. If you have any questions you can talk to the law firms listed in Question 33 for free or you can talk to your own lawyer if you have questions about what this means.

How To GET BENEFITS

26. How do I get Settlement benefits?

To get benefits, you will need to register. Registration will not begin until after the Settlement is approved by the Court (*see* Question 37) and any appeals are fully resolved. Once that occurs, further notice will be provided about how to register for benefits. In the meantime, please go to www.NFLConcussionSettlement.com or call 1-800-000-0000 to sign-up for notice of registration. Registration must be completed in the time permitted (180 days from the time notice of registration is provided) if you wish to receive any of the benefits provided through this Settlement.

27. Is there a time limit for Retired NFL Football Players to file claims for monetary awards?

Yes. Retired NFL Football Players and Representative Claimants must submit claims for monetary awards within two years after the date of the diagnosis for which they claim a monetary award, or the date the Settlement is granted final approval and any appeals are fully resolved, whichever is later. This deadline may be extended to within four years of the Qualifying Diagnosis or the date the Settlement is granted final approval and any appeals are fully resolved if the Retired NFL Football Player or Representative Claimant can show substantial hardship beyond the Qualifying Diagnosis. Derivative Claimants must submit claims no later than 30 days after the Retired NFL Football Player through whom the close relationship is the basis for the claim (or the Representative Claimant of that retired player) receives a notice that he is entitled to a monetary award.

All claims must be submitted by the end of the 65-year term of the Monetary Award Fund.

28. Can I re-apply for compensation if my claim is denied?

Yes. A Settlement Class Member who submits a claim for a monetary award that is denied can re-apply in the future should the Retired NFL Football Player's medical condition change.

29. Can I appeal the determination of my monetary award claim?

Yes. The Settlement establishes a process for a Settlement Class Member to appeal the denial of a monetary award claim or the amount of the monetary award.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive benefits from this Settlement, and you want to retain the right to sue the NFL Parties about the legal issues in this case, then you must take steps to remove yourself from the Settlement. You can do this by asking to be excluded – sometimes referred to as “opting out” of – the Settlement Class.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

30. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail a letter or other written document to the Claims Administrator. Your request must include:

- Your name, address, telephone number, and date of birth;
- A copy of your driver's license or other government issued identification;
- A statement that "I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323" (or substantially similar clear and unambiguous language); and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

You must mail your exclusion request, postmarked no later than **Month 00, 0000** [Date ordered by the Court], to [INSERT INFORMATION], City, ST 00000.

31. If I do not exclude myself, can I still sue the NFL Parties for the same things later?

No. Unless you exclude yourself, you give up the right to sue the NFL Parties for all of the claims that this Settlement resolves. If you want to maintain your own lawsuit relating to the claims released by the Settlement, then you must exclude yourself by **Month 00, 0000**.

32. If I exclude myself, can I still get benefits from this Settlement?

No. **If you exclude yourself from the settlement you will not get any Settlement benefits.** You will not be eligible to receive a monetary award or participate in the Baseline Assessment Program.

THE LAWYERS REPRESENTING YOU

33. Do I have a lawyer in the case?

The Court has appointed a number of lawyers to represent all Settlement Class Members as "Co-Lead Class Counsel," "Class Counsel" and "Subclass Counsel" (see Question 6). They are:

Christopher A. Seeger SEAGER WEISS LLP 77 Water Street New York, NY 10005	<i>Co-Lead Class Counsel</i> Sol Weiss ANAPOL SCHWARTZ 1710 Spruce Street Philadelphia, PA 19103
<i>Co-Lead Class Counsel</i> Steven C. Marks PODHURST ORSECK P.A. City National Bank Building 25 W. Flagler Street, Suite 800	<i>Co-Lead Class Counsel</i> Gene Locks LOCKS LAW FIRM The Curtis Center, Suite 720 East 601 Walnut Street

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Miami, FL 33130-1780	Philadelphia, PA 19106
<i>Class Counsel</i>	<i>Class Counsel</i>
Arnold Levin LEVIN FISHBEIN SEDRAN & BERMAN 510 Walnut Street, Suite 500 Philadelphia, PA 19106	Dianne M. Nast NAST LAW LLC 1101 Market Street, Suite 2801 Philadelphia, Pennsylvania 19107
<i>Counsel for Subclass 1</i>	<i>Counsel for Subclass 2</i>

You will not be charged for contacting these lawyers. If you are already represented by an attorney, you may contact your attorney to discuss the proposed settlement. If you are not already represented by an attorney, and you want to be represented by your own lawyer, you may hire one at your own expense.

Q5. How will the lawyers be paid?

At a later date to be determined by the Court, Co-Lead Class Counsel, Class Counsel and Subclass Counsel will ask the Court for an award of attorneys' fees and reasonable costs. The NFL Parties have agreed not to oppose or object to the request for attorneys' fees and reasonable incurred costs if the request does not exceed \$112.5 million. These fees and incurred costs will be paid separately by the NFL Parties and not from the \$760 million settlement funds. Settlement Class Members will have an opportunity to comment on and/or object to this request at an appropriate time. Ultimately, the award of attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

Q5. How do I tell the Court if I do not like the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you or your attorney must submit your written objection to the Court. The objection must include the following:

- The name of the case and multi-district litigation, *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323;
- Your name, address, telephone number, and date of birth;
- The name of the Retired NFL Football Player through which you are a Representative Claimant or Derivative Claimant (if you are not a retired player);
- Written evidence establishing that you are a Settlement Class Member;
- A detailed statement of your objections, and the specific reasons for each such objection, including any facts or law you wish to bring to the Court's attention;

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- Any other supporting papers, materials or briefs that you want the Court to consider in support of your objection; and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

In addition, if you intend to appear at the final approval hearing (the “Fairness Hearing”), you must submit a written notice of your intent [INSERT REQUIREMENTS FROM PRELIMINARY APPROVAL ORDER] by [INSERT DATE.]

The requirements to object to the Settlement are described in detail in the Settlement Agreement in section 14.3.

You must file your objection with the Court no later than **Month 00, 0000 [date ordered by the Court]**:

COURT
Clerk of the Court/Judge Anita B. Brody United States District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797

36. What is the difference between objecting to the Settlement and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement or want it to say something different. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and you do not want to receive any Settlement benefits. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. The Court will determine if you are allowed to speak if you request to do so (*see* Question 39).

37. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing at XX:00 x.m. on **Month 00, 0000**, at the United States District Court for the Eastern District of Pennsylvania, located at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.NFLConcussionSettlement.com or call 1-800-000-0000. At this hearing, the Court will hear evidence about whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and may elect to listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

The Court will consider the request for attorneys' fees and reasonable costs by Co-Lead Class Counsel, Class Counsel and Subclass Counsel (*see* Question 34) after the Fairness Hearing, which will be set at a later date by the Court.

38. Do I have to attend the hearing?

No. Co-Lead Class Counsel, Class Counsel and Subclass Counsel will answer questions the Court may have. But you are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not necessary.

39. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. The Court will determine whether to grant you permission to speak. To make such a request, you must file a written notice stating that it is your intent to appear at the *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323 Fairness Hearing ("Notice of Intention to Appear"). Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Court no later than Month 00, 0000.

GETTING MORE INFORMATION

40. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.NFLConcussionSettlement.com. You also may write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000 or call 1-800-000-0000.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE NFL PARTIES FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	: : : MDL No. 2323 12-md-2323
<hr/>	
THIS DOCUMENT RELATES TO:	: : : ALL ACTIONS
<hr/>	

January 14, 2014

Anita B. Brody, J.

MEMORANDUM

Plaintiffs, through their proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel, and Defendants National Football League and NFL Properties LLC (collectively, the “NFL Parties”)¹ have negotiated and agreed to a Class Action Settlement (“Settlement”) that will resolve all claims against the NFL Parties in this multidistrict litigation and Related Lawsuits.² To that end, proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel have filed a Motion for Preliminary Approval and Class Certification (“Motion”). This Motion is unopposed by the NFL Parties. In light of my duty to protect the rights of all potential class members and the insufficiency of the current record, I will deny the Motion without prejudice.

¹ Plaintiffs have also sued Riddell, Inc., Riddell Sports Group Inc., All American Sports Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG Holdings Corp. (collectively, the “Riddell Defendants”). The Riddell Defendants are not a party to the proposed Settlement.

² Except where otherwise noted, the capitalized terms in this Memorandum are taken from, and have the same meaning as those in, the Settlement Agreement. Pl. Mot. Ex. B, Jan. 6, 2014, ECF No. 5634.

I. BACKGROUND

In July 2011, Retired NFL Football Players filed the first lawsuit against the NFL Parties alleging, *inter alia*, that the NFL Parties breached their duties to the players by failing to take reasonable actions to protect players from the chronic risks created by concussive and sub-concussive head injuries and that the NFL Parties concealed those risks. Since then, more than 4,500 former players have filed substantially similar lawsuits. These lawsuits have been consolidated before me as a multidistrict litigation (“MDL”), pursuant to 28 U.S.C. § 1407. *See* Panel on Multidistrict Litigation Transfer Order, Jan. 31, 2012, ECF No. 1. As the transferee judge, I exercise authority over any coordinated or consolidated pretrial proceedings, including settlement proceedings. *See In re Patenaude*, 210 F.3d 135, 144-45 (3d Cir. 2000); 15 Charles Alan Wright et al., *Federal Practice & Procedure* § 3866 (4th ed. 2013) (“The transferee judge inherits the entire pretrial jurisdiction that the transferor court could have exercised had the case not been transferred.”).

On July 8, 2013, I directed the parties to mediation before retired U.S. District Judge Layn Phillips. Order, July 8, 2013, ECF No. 5128. During the course of the mediation, “[t]he Settling Parties met with multiple medical, actuarial, and economic experts to determine, develop and test an appropriate settlement framework to meet the needs of Retired NFL Football Players suffering from, or at risk for, the claimed injuries.” Pl. Mem. Law 36, Jan. 6, 2014, ECF No. 5634. “The parties’ economists and actuaries assisted in modeling the likely disease incidence and adequacy of the funding provisions and benefit levels contained in the proposed settlement.” Pl. Mot. Ex. D, Phillips Decl. ¶ 8, Jan. 6, 2014, ECF No. 5634. On August 29, 2013, Judge Phillips informed me that the Plaintiffs and the NFL Parties had signed a term sheet

incorporating the principal terms of a settlement. Order, Aug. 29, 2013, ECF No. 5235. On December 16, 2013, pursuant to Federal Rule of Civil Procedure 53, I appointed Perry Golkin as Special Master to assist me in analyzing the financial aspects of the Settlement. Order Appointing Special Master, Dec. 16, 2013, ECF No. 5607. Plaintiffs filed their Class Action Complaint on January 6, 2014. Class Action Compl., Turner v. Nat'l Football League, No. 14-29 (E.D. Pa. Jan. 6, 2014), ECF No. 1.

II. THE PROPOSED CLASS ACTION SETTLEMENT

A. The Proposed Settlement Class

The Settlement provides for a nationwide Settlement Class consisting of three types of claimants: (1) Retired NFL Football Players; (2) authorized representatives, ordered by a court or other official of competent jurisdiction, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and (3) close family members of Retired NFL Football Players or any other persons who properly assert, under applicable state law, the right to sue by virtue of their relationship with the Retired NFL Football Player (“Derivative Claimants”). Based on the records of the NFL Parties, there are more than 20,000 Settlement Class Members. Pl. Mem. Law 41, Jan. 6, 2014, ECF No. 5634.

The Settlement Class consists of two Subclasses: Subclass 1 is defined as Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order, and their Representative Claimants and Derivative Claimants; and Subclass 2 is defined as Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a

Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of chronic traumatic encephalopathy (“CTE”). A Qualifying Diagnosis is defined as Level 1.5 Neurocognitive Impairment (early Dementia), Level 2 Neurocognitive Impairment (moderate Dementia), Alzheimer’s Disease, Parkinson’s Disease, amyotrophic lateral sclerosis (“ALS”), and/or Death with CTE.

B. The Proposed Settlement

As explained in the Plaintiffs’ Memorandum of Law accompanying the Motion, the NFL Parties will make payments totaling \$760 million over a period of 20 years to create three potential sources of benefits for Settlement Class Members.

First, the Settlement provides for a \$75 million Baseline Assessment Program (“BAP”) that will offer eligible Retired NFL Football Players baseline neuropsychological and neurological evaluations to determine the existence and extent of any cognitive deficits. In the event that retired players are found to suffer from moderate cognitive impairments, they may receive certain BAP Supplemental Benefits in the form of specified medical treatment and/or evaluation, including counseling and pharmaceutical coverage.

Second, the Settlement provides for a \$675 million Monetary Award Fund that will award cash to Retired NFL Football Players who already have a Qualifying Diagnosis or receive one in the future.³ Representative Claimants and Derivative Claimants related to such players will also be eligible for cash awards. The Qualifying Diagnoses and their maximum Monetary Award levels are as follows: Level 1.5 Neurocognitive Impairment (\$1.5 million); Level 2 Neurocognitive Impairment (\$3 million); Alzheimer’s Disease (\$3.5 million); Parkinson’s

³ The Settlement further provides that in the event of a funding shortfall, the NFL Parties will contribute up to an additional \$37.5 million to the Monetary Award Fund.

Disease (\$3.5 million); ALS (\$5 million); Death with CTE (\$4 million). These awards may be reduced based on a retired player's age at the time of diagnosis, the number of NFL seasons played, and other applicable offsets outlined in the Settlement Agreement.

Third, the Settlement establishes a \$10 million Education Fund to fund education programs promoting safety and injury prevention with regard to football players, including safety-related initiatives in youth football. This Fund will also educate Retired NFL Football Players regarding the NFL's medical and disability programs.

In addition, the NFL Parties will pay up to \$4 million in notice expenses. The NFL Parties will also pay attorneys' fees and costs, which Plaintiffs' Co-Lead Counsel will seek in an amount not to exceed \$112.5 million. These amounts are in addition to the \$760 million for the BAP, the Monetary Award Fund, and the Education Fund.

The Settlement includes a complex system of administration to manage the distribution of benefits. A Special Master, appointed for a five-year term, will oversee the work of a BAP Administrator, a Claims Administrator, and other administrative staff. The NFL Parties have agreed to pay one-half of the compensation of the Special Master, which is capped at \$200,000 per year. The BAP Fund will pay the compensation and reasonable costs and expenses of the BAP Administrator. The Monetary Award Fund will pay the compensation and reasonable costs and expenses of the Claims Administrator; the reasonable costs and expenses of the Special Master; and the other half of the Special Master's compensation.

In exchange for the benefits provided in the Settlement, Settlement Class Members and their related parties will release all claims and dismiss with prejudice all actions against, and covenant not to sue, the NFL Parties and others in this litigation and all Related Lawsuits in this Court and other courts. Settlement Class Members who receive Monetary Awards will also be

required to dismiss pending and/or forebear from bringing litigation relating to cognitive injuries against the National Collegiate Athletic Association (“NCAA”) and any other collegiate, amateur, or youth football organizations and entities.

III. DISCUSSION

A. Nature of a Class Action

Plaintiffs have chosen to structure this case as a class action. “Class actions are a form of representative litigation. One or more class representatives litigate on behalf of many absent class members, and those class members are bound by the outcome of the representative’s litigation.” 1 William B. Rubenstein, *Newberg on Class Actions* § 1:1 (5th ed. 2013) [hereinafter Rubenstein, *Class Actions*]. Class certification enables courts to treat common claims together, obviating the need for repeated adjudications of the same issues. Rubenstein, *Class Actions* at § 1:6. Class actions achieve “the protection of the defendant from inconsistent obligations, the protection of the interests of absentees, the provision of a convenient and economical means for disposing of similar lawsuits, and the facilitation of the spreading of litigation costs among numerous litigants with similar claims.” *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 402-03 (1980).

Despite the potential benefits of class actions, their binding effect on absentee parties remains a significant concern. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) [hereinafter, *General Motors*]. Following the resolution of a class action, class members are barred from relitigating their claims against the defendant, and the defendant may present the class action judgment as an affirmative defense to any such suit. Rubenstein, *Class Actions* at § 1:6. “The class member may not protest that she was not

present at the class action: her membership in the class constitutes her presence for preclusion purposes.” *Id.*

Accordingly, under Federal Rule of Civil Procedure 23, the court must assure “to the greatest extent possible, that the actions are prosecuted on behalf of the actual class members in a way that makes it fair to bind their interests.” *General Motors*, 55 F.3d at 785. “Rule 23(e) imposes on the trial judge the duty of protecting absentees, which is executed by the court’s assuring that the settlement represents adequate compensation for the release of the class claims.” 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11:46 (4th ed. 2002). Courts have described their duties as a “fiduciary responsibility, as the guardian of the rights of the absentee class members.” *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *see General Motors*, 55 F.3d at 784; *In re Warner Commun. Sec. Litig.*, 798 F.2d 35, 37 (2d Cir. 1986). “The ultimate responsibility to ensure that the interests of class members are not subordinated to the interests of either the class representatives or class counsel rests with the district court.” *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1078 (2d Cir. 1995).

B. Preliminary Approval of the Proposed Settlement⁴

Under Federal Rule of Civil Procedure 23(e), the settlement of a class action requires court approval, which may issue only “on finding that [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Review of a proposed class action settlement typically proceeds in two stages. At the first stage, the parties submit the proposed settlement to the court, which must make “a preliminary fairness evaluation.” *Manual for Complex Litigation*

⁴ Where, as here, the Court has not already certified a class, the Court must also determine whether the proposed settlement class satisfies the requirements of Rule 23. *Amchem v. Windsor*, 521 U.S. 591, 620 (1997). At the preliminary approval stage, the Court may conditionally certify the class for purposes of providing notice. *Manual for Complex Litigation (Fourth)* § 21.632 (2004) (“The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b.”). Because I am denying preliminary approval of the settlement on other grounds, I will not address the issue of conditional class certification at this time.

(Fourth) § 21.632 (2004) [hereinafter, *MCL*]. If the proposed settlement is preliminarily acceptable, the court then directs that notice be provided to all class members who would be bound by the proposed settlement in order to afford them an opportunity to be heard on, object to, and opt out of the settlement. *See Fed. R. Civ. P.* 23(c)(3), (e)(1), (e)(5); *see also Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975) (“[D]ue process requires that notice of a proposed settlement be given to the class.”). At the second stage, after class members are notified of the settlement, the court holds a formal fairness hearing where class members may object to the settlement. *See Fed. R. Civ. P.* 23(e)(1)(B). If the court concludes that the settlement is “fair, reasonable and adequate,” the settlement is given final approval. At this time, Plaintiffs request only that I grant preliminary approval.

a. Standard of Review

At the preliminary approval stage, the bar to meet the “fair, reasonable and adequate” standard is lowered, and the court is required to determine whether “the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.” *Thomas v. NCO Fin. Sys.*, No. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002) (Waldman, J.) (citing *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995)).⁵ To determine whether a settlement “falls within the range of possible approval,” a court must “consider plaintiffs’ expected recovery balanced against the value of the settlement offer.” *In re*

⁵ At the final approval stage, the fairness, reasonableness and adequacy of the settlement are assessed by considering the following factors: (1) The complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Girsh*, 521 F.2d at 156–57.

Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). In *General Motors*, the Third Circuit stated that “an initial presumption of fairness [exists] when the court finds that (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” 55 F.3d at 785-86. This examination is generally “made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties.” *MCL* at § 21.632. The purpose of this examination is in part to detect defects in the settlement that would risk making “notice to the class, with its attendant expenses, and a hearing . . . futile gestures.” 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11:25 (4th ed. 2002).

That said, preliminary approval is not simply a judicial “rubber stamp” of the parties’ agreement. *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 338 (N.D. Ohio 2001). “Judicial review must be exacting and thorough. The task is demanding because the adversariness of litigation is often lost after the agreement to settle.” *MCL* at § 21.61. “In cases such as this, where settlement negotiations precede class certification, and approval for settlement and certification are sought simultaneously, we require district courts to be even ‘more scrupulous than usual’ when examining the fairness of the proposed settlement.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004) (citing *General Motors*, 55 F.3d at 805). Accordingly:

Even though the preliminary approval analysis set forth by the Third Circuit in *General Motors* is not rigorous, there is no bar to conducting a more thorough analysis at the preliminary approval stage. Motions for preliminary approval of a class action settlement, especially before the class is certified pursuant to Fed. R. Civ. P. 23, are not perfunctory. If a proposed settlement appears obviously deficient, the ruling should be issued before rather than after the parties incur the administrative expense to publish notice to the class and handle any objections.

Zimmerman v. Zwicker & Assocs., P.C., No. 09–3905, 2011 WL 65912, at *3 n. 5 (D.N.J. Jan. 10, 2011) (citations omitted) (denying a motion for preliminary approval where, among other concerns, the class members received insufficient value for the release of their claims).

b. Analysis

Counsel for the Plaintiffs and the NFL Parties have made a commendable effort to reach a negotiated resolution to this dispute. There is nothing to indicate that the Settlement is not the result of good faith, arm's-length negotiations between adversaries. Nonetheless, on the basis of the present record, I am not yet satisfied that the Settlement "has no obvious deficiencies, grants no preferential treatment to segments of the class, and falls within the range of possible approval." *Cordy v. USS-Posco Indus.*, No. 12-553, 2013 WL 4028627, at *3 (N.D. Cal. July 31, 2013).

I am primarily concerned that not all Retired NFL Football Players who ultimately receive a Qualifying Diagnosis or their related claimants will be paid.⁶ The Settlement fixes the size of the Monetary Award Fund. It also fixes the Monetary Award level for each Qualifying Diagnosis, subject to a variety of offsets. In various hypothetical scenarios, the Monetary Award Fund may lack the necessary funds to pay Monetary Awards for Qualifying Diagnoses. More specifically, the Settlement contemplates a \$675 million Monetary Award Fund with a 65-year lifespan for a Settlement Class of approximately 20,000 people. Retired NFL Football Players with a Qualifying Diagnosis of Parkinson's Disease, for example, are eligible for a maximum award of \$3.5 million; those with a Qualifying Diagnosis of ALS may receive up to \$5 million. Even if only 10 percent of Retired NFL Football Players eventually receive a Qualifying

⁶ I have additional concerns including, but not limited to, the adequacy of the BAP Fund and the release of the NCAA and other amateur football organizations. These concerns will also have to be addressed.

Diagnosis, it is difficult to see how the Monetary Award Fund would have the funds available over its lifespan to pay all claimants at these significant award levels.

The parties are responsible for supplementing the record to provide the court with the information needed to evaluate the fairness or adequacy of a proposed settlement. *MCL* at § 21.632. *See Martin v. Cargill, Inc.*, No. 13-2563, 2013 WL 5806165, at *3 (D. Minn. Oct. 29, 2013) (holding that the evidence submitted by the parties was insufficient to support preliminary approval of the class settlement where the parties’ submissions provided almost no information enabling the court to gauge the value of the proposed class’ claims); *Custom LED, LLC v. eBay, Inc.*, No. 12-350, 2013 WL 4552789, at *9 (N.D. Cal. Aug. 27, 2013) (denying a motion to preliminarily approve settlement where, *inter alia*, the parties “provided the Court with no information as to the class members’ potential range of recovery”); *Galloway v. Kansas City Landsmen, LLC*, No. 11-1020, 2013 WL 3336636, at *4 (W.D. Mo. July 2, 2013) (denying a motion for preliminary approval where the court remained concerned that the amended settlement offered insufficient value for class members’ claims and the record was insufficient to determine the approximate value of the class members’ claims and the amended settlement); *Sobel v. Hertz Corp.*, No. 06-545, 2011 WL 2559565, at *10 (D. Nev. June 27, 2011) (finding the court could not “even begin th[e] inquiry” where “the parties ha[d] failed to provide . . . evidence of . . . the total amount of . . . fees that were charged to the class members, let alone potential ranges of recovery and the chances of obtaining it”).

The current record does not sufficiently address my concerns. The Declaration from Judge Phillips refers to “analyses conducted by the independent economists or actuaries retained by the parties” to justify his belief that the \$760 million to be paid by the NFL Parties “is fair and reasonable and will be sufficient to fund the benefits to which the parties have agreed.” Pl. Mot.

Ex. D, Phillips Decl. ¶ 20, Jan. 6, 2014, ECF No. 5634. Plaintiffs allege that their economists conducted analyses to ensure that there would be sufficient funding to provide benefits to all eligible Class Members given the size of the Settlement Class and projected incidence rates, and Plaintiffs' counsel "believe" that the aggregate sum is sufficient to compensate all Retired NFL Football Players who may receive Qualifying Diagnoses. Pl. Mem. Law 22, Jan. 6, 2014, ECF No. 5634. Unfortunately, no such analyses were provided to me in support of the Plaintiffs' Motion. In the absence of additional supporting evidence, I have concerns about the fairness, reasonableness, and adequacy of the Settlement.

IV. CONCLUSION

I will deny the Motion for Preliminary Approval and Class Certification without prejudice. As a first step toward preliminary approval, I will order the parties to share the documentation referred to in their submissions with the Court through the Special Master.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL	:
LEAGUE PLAYERS' CONCUSSION	:
INJURY LITIGATION	:
	MDL No. 2323
	12-md-2323
<hr/>	
THIS DOCUMENT RELATES TO:	:
ALL ACTIONS	:

ORDER

AND NOW, this 14th day of January, 2014, it is **ORDERED** that Plaintiffs' Motion for Preliminary Approval and Class Certification [ECF No. 5634] is **DENIED** without prejudice. The parties are **ORDERED** to share the documentation referred to in their submissions with the Court through the Special Master.

s/Anita B. Brody

ANITA B. BRODY, J.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL	:	
LEAGUE PLAYERS' CONCUSSION	:	
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	:	12-md-2323
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THIS DOCUMENT RELATES TO:	:	
14-cv-0029	:	
	:	
KEVIN TURNER, et al.,	:	
	:	
v.	:	
	:	
NATIONAL FOOTBALL LEAGUE, et al.	:	

ORDER

AND NOW, this 15th day of April, 2014, pursuant to the Court's January 14, 2014 order in Civil Action No. 12-2323 [ECF No. 5658], it is **ORDERED** that the Motion for Preliminary Approval and Class Certification [ECF No. 2] is **DENIED** without prejudice.

s/Anita B. Brody

ANITA B. BRODY, J.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:
14-cv-0029

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

STIPULATION AND ORDER

The Parties hereby stipulate and agree that:

Today's docket entry (Doc. 5910) in *In re: National Football League Players' Concussion Injury Litigation*, MDL No. 2323, 12-md-2323, as relating to *Turner, et al. v. National Football League, et al.*, 14-cv-0029, of an order denying without prejudice the Motion for Preliminary Approval and Class Certification was not a new decision by the Court, but simply a housekeeping and electronic filing entry of the same order the Court already entered on January 14, 2014 in MDL No. 2323. Today's order does not reflect any new ruling or new concerns by the Court. The parties are continuing to work with the Court and its Special Master to address the issues raised in the Court's order dated January 14, 2014.

It is so STIPULATED AND AGREED,

By: Christopher Seeger /BB
Date: 4/16/14

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Plaintiffs' Co-Lead Class Counsel

Plaintiffs' Co-Lead Class Counsel

By: Brad S. Karp /BB
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Counsel for the NFL Defendants

It is so ORDERED.

April 16, 2014
Date

Anita B. Brody

Judie B. Brody
United States District Judge

Copies VIA ECF on _____ to:

Copies MAILED on _____ to:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
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Plaintiffs,

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National Football League and
NFL Properties, LLC,
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Defendants.

THIS DOCUMENT RELATES TO:
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**MOTION TO INTERVENE BROUGHT BY
SEAN MOREY, ALAN FANECA, BEN HAMILTON, ROBERT ROYAL,
RODERICK CARTWRIGHT, JEFF ROHRER, AND SEAN CONSIDINE**

Pursuant to Federal Rule of Civil Procedure 24(a), Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick “Rock” Cartwright, Jeff Rohrer, and Sean Considine (the “Intervenors”) respectfully move to intervene as of right in Civil Action No. 2:14-cv-00029-AB and MDL No. 2323. Alternatively, the Intervenors request permissive intervention under Rule 24(b).

For the reasons set forth more fully in the accompanying Memorandum, which is incorporated herein as if fully set forth, the Intervenors are entitled to intervention as of right. As putative class members, the Intervenors have an interest in the outcome of this litigation that will be impaired by resolution of this case. Settlement negotiations are occurring at which the

substantial rights and interests of Intervenors and similarly situated class members are being affected. The Intervenors' interests are not adequately represented by the current parties to the litigation. Finally, the Intervenors' application is timely. Accordingly, the Intervenors are entitled to plaintiff-intervenor status in Civil Action No. 2:14-cv-00029-AB. *See Fed. R. Civ. P.* 23(a)(2).

In the alternative, because Intervenors share with the main action common questions of law and fact, they are entitled to permissive intervention. *See Fed. R. Civ. P.* 23(b).

In satisfaction of Federal Rule of Civil Procedure 24(c), the Intervenors attach as Exhibit A Plaintiffs' Class Action Complaint.

WHEREFORE, for the reasons stated above and in the accompanying Memorandum of Law, Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine respectfully request that this Court enter an order granting them leave to intervene.

Dated: May 5, 2014

/s/ William T. Hangley

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EXHIBIT A

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 1 of 80

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
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Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

CIVIL ACTION NO: _____

PLAINTIFFS' CLASS ACTION COMPLAINT

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 2 of 80

INTRODUCTION

1. Plaintiffs bring this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and as representatives of a class of persons consisting of:

(1) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club ("Retired NFL Football Players"); (2) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players ("Representative Claimants"); and (3) Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player ("Derivative Claimants").

2. Plaintiffs bring this action individually and as Class and Subclass representatives against the National Football League and NFL Properties, LLC (together, "NFL Defendants" or "Defendants") (i) to obtain medical monitoring and treatment for neurocognitive impairment in Retired NFL Football Players, (ii) to recover monetary awards for Retired NFL Football Players, their Representative Claimants, and their Derivative Claimants for injuries sustained by the Retired NFL Football Players as a proximate result of playing professional football, such as dementia, Alzheimer's Disease ("Alzheimer's"), Parkinson's Disease ("Parkinson's"), Amyotrophic Lateral Sclerosis ("ALS") and Death with Chronic Traumatic Encephalopathy ("CTE"), and (iii) to establish an education fund to fund education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, and the education of Retired NFL Football Players regarding the

NFL's medical and disability benefits programs and other educational programs and initiatives.

The allegations herein, except as to the Plaintiffs, are based on information and belief.

3. This action arises from the effects of mild traumatic brain injuries (referenced herein as "MTBI") caused by the concussive and sub-concussive impacts that have afflicted former professional football players in the NFL. For many decades, evidence has linked repetitive MTBI to long-term neurological problems in many sports, including football. The NFL, as the organizer, marketer, and face of the most popular sport in the United States, in which MTBI is a regular occurrence and in which players are at risk for MTBI, was aware of the evidence and the risks associated with repetitive traumatic brain injuries, but deliberately ignored and actively concealed the information from the Plaintiffs and all others who participated in organized football at all levels.

PARTIES

4. Plaintiff Shawn Wooden is a resident and citizen of the State of Florida, residing in Pembroke Pines, Florida. Mr. Wooden is a retired NFL football player. He played professional football in the NFL from 1996-2004. He played as a safety for the Miami Dolphins and the Chicago Bears. During his career in the NFL he experienced repeated traumatic head impacts. After his retirement from football he has experienced neurological symptoms. Mr. Wooden has not been diagnosed with any neurocognitive impairment, but is at increased risk of developing dementia, Alzheimer's, Parkinson's, or ALS, as a proximate result of his having played professional football in the NFL, and, therefore, is in need of medical monitoring.

5. Plaintiff Marcia Wooden is married to Shawn Wooden and is a resident of Florida. Mrs. Wooden is a Derivative Claimant.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 4 of 80

6. Plaintiffs Blake Wooden, Shane Wooden, Brooke Wooden, and Taiya Wooden are Shawn Wooden's children. They reside in Florida and are Derivative Claimants.

7. Plaintiff Kevin Turner is a resident and citizen of the State of Alabama, residing in Birmingham, Alabama. Mr. Turner is a retired NFL football player. He played professional football in the NFL from 1992-1994 for the New England Patriots and from 1995-1999 for the Philadelphia Eagles as a fullback. Mr. Turner was diagnosed with ALS in June 2010.

8. Plaintiffs Cole Turner, Nolan Turner and Natalie Turner are Kevin Turner's children. They reside in Birmingham, Alabama. They are Derivative Claimants.

9. Defendant NFL, which maintains its offices at 345 Park Avenue, New York, New York, is an unincorporated association consisting of separately owned and independently-operated professional football teams which operate out of many different cities and states within this country. The NFL is engaged in interstate commerce in the business of, among other things, promoting, operating, organizing, and regulating the major professional football league in the United States. NFL regularly conducts business in Pennsylvania and in this judicial district.

10. The NFL is not, and has not been, the employer of the Plaintiffs Shawn Wooden or Kevin Turner, who were employed during their respective careers in professional football by the independent clubs (hereinafter "Teams" or "Clubs") set forth above. The United States Supreme Court held in *American Needle, Inc. v. NFL*, 130 S. Ct. 2201, 2212-13 (2010), that each team that is a member of the NFL is a legally distinct and separate entity from both the other teams and the NFL itself.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 5 of 80

11. Defendant NFL Properties, LLC, as the successor-in-interest to National Football League Properties Inc. ("NFL Properties"), is a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in the State of New York. NFL Properties is engaged in, among other activities, approving, licensing and promoting equipment used by all the National Football League teams. NFL Properties regularly conducts business in Pennsylvania and in this judicial district.

12. On information and belief, NFL Defendants' policies and decision-making relevant to its conduct and the risks of latent brain injury alleged herein, occurred primarily at its corporate offices in New York City.

JURISDICTION AND VENUE

13. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), because the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and is a class action in which members of the proposed Class and Subclasses of Plaintiffs are citizens of a State different from the Defendants.

14. This Court has personal jurisdiction over the Defendants because they conduct substantial and continuous business in the Commonwealth of Pennsylvania.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1331(a) and (b), because a substantial part of the events or omissions that give rise to the claims occurred within the Commonwealth of Pennsylvania and this district, because the Defendants conduct a substantial part of their business within this district, and because the Judicial Panel on Multi-District Litigation decided to consolidate and transfer these cases to this Court.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 6 of 80

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and as representatives of a Class consisting of:

(1) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club ("Retired NFL Football Players"); (2) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players ("Representative Claimants"); and (3) Spouses, parents, children who are dependents, or any other persons properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player ("Derivative Claimants").

17. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Plaintiffs bring this action on behalf of the following Subclasses.

a. Plaintiff Shawn Wooden brings this case individually and on behalf of Subclass 1, which shall consist of all Retired NFL Football Players who were not diagnosed with dementia, Alzheimer's Disease, Parkinson's Disease, ALS and/or Death with CTE prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

b. Plaintiff Kevin Turner brings this case individually and on behalf of Subclass 2, which shall consist of all Retired NFL Football Players who were diagnosed with dementia, Alzheimer's Disease, Parkinson's Disease, ALS and/or Death with CTE prior to the date of the Preliminary Approval and Class Certification Order and

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 7 of 80

their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with dementia, Alzheimer's Disease, Parkinson's Disease, ALS and/or Death with CTE prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and received a post-mortem diagnosis of CTE.

18. Plaintiffs, the Class and each of the Subclasses bring this action for equitable and injunctive relief pursuant to Federal Rule of Civil Procedure 23(a)(1-4) & (b)(2) (with a right of opt-out) or alternatively pursuant to Rule 23(b)(3) to create a Court-supervised fund to provide medical monitoring and treatment for neurocognitive impairment to assure that Retired NFL Football Players receive a prompt and proper diagnosis of and treatment for neurocognitive impairment, and to provide education programs promoting safety and injury prevention in football players, and education of retired NFL players regarding the NFL's medical and disability benefits programs and other education programs and initiatives.

19. Plaintiffs, the Class and each of the Subclasses, bring this action for compensatory damages pursuant to Federal Rule of Civil Procedure 23(b)(3). Retired NFL Football Players are at increased risk for and/or have suffered personal injury as a direct and proximate result of their having played professional football, for which an award of damages is appropriate to them or their Representative Claimants. In addition, the Derivative Claimants have suffered damages as a direct and proximate result of the fact that the Retired NFL Football Players to whom they are related played professional football, for which an award of damages is appropriate.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 8 of 80

20. The named plaintiffs herein are members of the Class and each Subclass they seek to represent. Plaintiff Shawn Wooden is a member of Subclass 1. Plaintiff Kevin Turner is a member of Subclass 2.

21. The Class and each Subclass includes thousands of individuals who are geographically widely dispersed, and therefore the members of the Class and Subclasses are each so numerous that joinder of all members is impracticable.

22. There are questions of law and fact common to the members of the Class and Subclasses.

23. Plaintiffs' claims are typical of the claims of the members of the Class and the respective Subclasses they seek to represent, in that each named Plaintiff and all members of the proposed Subclass are Retired NFL Football Players or assert rights and claims as a "Derivative Claimant" or "Representative Claimant" of a Retired NFL Football Player, as these terms are defined in the proposed Class and Subclass definitions.

24. In the case of the proposed medical monitoring program, which includes baseline assessments, and an education fund, the representative Plaintiffs and the Subclass members as a whole will benefit from such relief, and their interests are aligned, because they retired from playing professional football for the NFL, and because of their consequential increased risk of neurocognitive impairment, including ALS, Alzheimer's, Parkinson's, and dementia. The diagnostic testing, education, and collection of data will work to benefit the entire Class.

25. Plaintiffs will fairly and adequately protect the interests of the proposed Class and Subclasses.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 9 of 80

26. Questions of law and fact common to the members of the Class and Subclasses predominate over any questions affecting only individual members of the Class or Subclasses. These include the following:

- a. Whether Plaintiffs and the Class and Subclasses are entitled to injunctive relief in the form of a Court-supervised medical monitoring program and an education fund;
- b. Whether Plaintiffs and the Class and Subclasses are entitled to compensation for neurocognitive impairment, like ALS, Alzheimer's, Parkinson's, dementia, and Death with CTE, proximately caused by injuries sustained while playing professional football in the NFL;
- c. Whether the Defendants have any affirmative defenses that can be litigated on a classwide basis;
- d. Whether the Defendants' conduct was tortious and caused members of the Class and Subclasses to be at increased risk of neurocognitive impairment;
- e. Whether medical monitoring is reasonably necessary for Retired NFL Football Players in the Class and Subclasses to obtain early diagnosis of neurocognitive impairment;
- f. Whether such medical monitoring is beyond the routine medical care provided to men of a similar age as members of the Class and Subclasses; and
- g. Whether early diagnosis of neurocognitive impairment will lead to improved treatment for the medical, cognitive, psychological and behavioral sequelae of the same.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 10 of 80

27. The members of the Class and Subclasses are ascertainable.
28. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

FACTUAL ALLEGATIONS

The NFL

29. The NFL generates approximately \$9,300,000,000 in gross income per year.
30. The organization oversees America's most popular spectator sport, acting as a trade association for the benefit of the 32 independently operated Teams. The NFL's average attendance per game in 2009 was 67,509.
31. The NFL has, since its inception in the first half of the twentieth century, governed and promoted the game of football, and as referenced in detail herein, it was created and established to act as the governing body, establishing rules related to player health and safety, League policies, and team ownership.
32. The NFL generates revenue mostly through marketing sponsorships, licensing merchandise, and by selling national broadcasting rights to the games. The Teams share a percentage of the League's overall revenue.
33. The NFL earns billions of dollars from its telecasting deals with, inter alia, ESPN (\$1.1 billion), DirecTV (\$1 billion), NBC (\$650 million), Fox (\$712.5 million), and CBS (\$622.5 million).
34. Annually, the NFL redistributes approximately \$4 billion in radio, television, and digital earnings to the Teams or approximately \$125 million per Team. Those revenue numbers show no sign of declining and have increased since 2009.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 11 of 80

35. The NFL enjoys partial monopoly power through an anti-trust exemption granted via the federal Sports Broadcasting Act that allows the NFL to sell television rights for all 32 teams as a single unit.

The NFL's Influence

36. In part because of their financial power, monopoly status, and high visibility, the NFL Defendants have had enormous influence over the game of football at all levels of the game.

37. Over many decades, the NFL Defendants' influence has been expanded through their use of the media. Through NFL films, the NFL Network, and www.NFL.com, the NFL Defendants have promoted NFL football via every mass communication medium available.

The NFL's Use of the Media

38. Part of the NFL Defendants' strategy to promote NFL football is to glorify the accomplishments of individuals and Teams, not discourage aggressiveness and collisions on the field, and simultaneously make the fraudulent representation that "getting your bell rung," "being dinged" and putting big hits on others does not seriously threaten one's health.

39. As a result of this strategy, the NFL Defendants have propagated the false myth that collisions of all kinds, many of which lead to short-term and long-term neurological damage to current and former NFL players, are an acceptable, desired, and natural consequence of the game, and a measure of the courage and heroism of those involved in football at every level of the game.

40. As a result of this strategy, and the overwhelming influence of the NFL Defendants at every level of the game, the NFL Defendants have generated for themselves and others billions of dollars every year.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 12 of 80

NFL Films

41. NFL Films is an agent and instrumentality of the NFL Defendants devoted to producing promotional films for the NFL. NFL Films is known for the style it features in all of its productions, capturing the NFL games, plays, players, and overall NFL environment in an artistic, promotional fashion. NFL Films' cinematography is intended to create compelling storylines and highlight certain aspects of the game. NFL Films takes viewers right into the football action with close-ups and slow motion depiction of all the hard-hitting action taking place on the football field.

42. The NFL focuses on collisions as one of the NFL's greatest selling points: the football player as gladiator. To advance the NFL Defendants' purpose, NFL Films has created numerous highlight features that focus solely on the hardest-hits that take place on the football field.

43. The list of videos created by NFL Films glorifying aggressive plays includes, but is not limited to, the following titles: *NFL: Moment of Impact* (2007); *NFL's 100 Greatest Tackles* (1995); *Big Blocks and King Size Hits* (1990); *The Best of Thunder and Destruction – NFL's Hardest Hits*; *NFL Films Video: Strike Force* (1989); *The NFL's Greatest Hits* (1989); *Crunch Course*; *Crunch Course II* (1988); *Crunch Masters*; *In the Crunch* (1987); *NFL Rocks*; *NFL Rocks: Extreme Football*.

44. NFL Films created the "Top Ten Most Feared Tacklers" series that was shown on the NFL Network, and it now has its own section on the NFL's website. These features comprise videos highlighting the most aggressive tacklers the NFL has ever seen.

45. An explicit example of how the NFL Defendants marketed the aggressive nature of the NFL can be found on the back cover of the 2007 film "*Moment of Impact*." The

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 13 of 80

back cover of “*Moment of Impact*” advertises the film as follows: “First you hear the breathing, then you feel the wind coming through your helmet’s ear hole. Suddenly you’re down, and you’re looking through your helmet’s ear hole. Pain? That’s for tomorrow morning. Right now you’ve gotta focus – focus on the play and try not to focus on the next moment of impact.” The entire message deemphasizes the acute and chronic risks associated with these head impacts.

46. NFL Films, therefore, advances the NFL Defendants’ agenda to promote the most aggressive aspects of NFL football and to urge players at every level of the game to disregard the results of head impacts.

47. The NFL Defendants strategically utilize NFL Films’ cinematography and sound to exaggerate and emphasize hard hits to the head. The magnitude of the hit is emphasized by the slow-motion footage and the on-field microphones. Hard hits captured by NFL Films take on the appearance of the slow-motion crash safety test videos that appear in many car commercials – with players taking on the role of the crash-test dummy.

48. The NFL Defendants, through NFL Films, promotes a culture in which playing hurt or with an injury is both expected and acclaimed in its mythical gladiator world. Through NFL Films, the NFL has produced videos that praise players who embody the ethos of playing hurt (for example, “*Top Ten Gutsiest Performances*”). This film and others like it celebrate players’ ability to play through the pain and injury and promote an expectation among players and fans that players must and often do play through any injury, including MTBI.

49. This is part of the overall culture in which NFL players are encouraged to play despite an injury, in part, because failure to play through an injury creates the risk of losing playing time, a starting position, and possibly a career.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 14 of 80

50. Within this culture, the NFL Defendants profit from the aggression they promote.

51. This culture of aggression, sponsored and encouraged by the NFL Defendants, can be demonstrated through many examples.

52. For instance, after joining the NFL, the Cleveland Browns were led by Hall of Famer Otto Graham to many consecutive championships. The media and the NFL management at the time were well aware of the targeted blows to the head suffered by Graham, with resulting loss of consciousness. Nevertheless, Graham was encouraged to come back and play in each game.

53. In the decades of the 1980s, 1990s and 2000s, players were lauded by the NFL Defendants for their “head hunting” skills. As recently as October 2010, the NFL fined some players for what it characterized as “illegal and dangerous hits” and yet, notwithstanding those fines, in an effort to profit, the NFL Defendants sold photos of the illegal hits on its website for between \$54.95 and \$249.95.

Head Injuries, Concussions, and Neurological Damage

54. Medical science has known for many decades that repetitive jarring of the head or impact to the head can cause MTBI with a heightened risk of long-term, chronic neurocognitive sequelae.

55. The NFL Defendants have known or should have known for many years that the American Association of Neurological Surgeons (the “AANS”) has defined a concussion as “a clinical syndrome characterized by an immediate and transient alteration in brain function, including an alteration of mental status and level of consciousness, resulting from mechanical force or trauma.” The AANS defines traumatic brain injury (“TBI”) as:

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 15 of 80

a blow or jolt to the head, or a penetrating head injury that disrupts the normal function of the brain. TBI can result when the head suddenly and violently hits an object, or when an object pierces the skull and enters brain tissue. Symptoms of a TBI can be mild, moderate or severe, depending on the extent of damage to the brain. Mild cases may result in a brief change in mental state or consciousness, while severe cases may result in extended periods of unconsciousness, coma or even death.

56. The NFL Defendants have known or should have known for many years that MTBI generally occurs when the head either accelerates rapidly and then is stopped, or is rotated rapidly. The results frequently include, among other things, confusion, blurred vision, memory loss, nausea, and sometimes unconsciousness.

57. The NFL Defendants have known or should have known for many years that medical evidence has shown that symptoms of MTBI can appear hours or days after the injury, indicating that the injured party has not healed from the initial blow.

58. The NFL Defendants have known or should have known for many years that once a person suffers an MTBI, he is up to four times more likely to sustain a second one. Additionally, after suffering even a single sub-concussive or concussive blow, a lesser blow may cause MTBI, and the injured person requires more time to recover. This goes to the heart of the problem: players being unaware of the serious risk posed to their long-term cognitive health.

59. The NFL Defendants have known or should have known for many years that clinical and neuropathological studies by some of the nation's foremost experts demonstrate that multiple head injuries or concussions sustained during an NFL player's career can cause severe cognitive problems such as depression and early-onset dementia.

60. The NFL Defendants have known or should have known for many years that published peer-reviewed scientific studies have shown that repeated traumatic head impacts (including sub-concussive blows and concussions) cause ongoing and latent brain injury. These

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 16 of 80

injuries have been documented and associated with sports-related head impacts in both football and boxing.

61. The NFL Defendants have known or should have known for many years that neuropathology studies, brain imaging tests, and neuropsychological tests on many former football players, including former NFL players, have established that football players who sustain repetitive head impacts while playing the game have suffered and continue to suffer brain injuries that result in any one or more of the following conditions: early-onset of Alzheimer's, dementia, depression, deficits in cognitive functioning, reduced processing speed, attention, and reasoning, loss of memory, sleeplessness, mood swings, personality changes, and the debilitating and latent disease known as CTE. The latter condition involves the slow build-up of the Tau protein within the brain tissue that causes diminished brain function, progressive cognitive decline, and many of the symptoms listed above. CTE is also associated with an increased risk of suicide.

62. The NFL Defendants have known or should have known for many years that CTE is found in athletes, including football players and boxers, with a history of repetitive head trauma. Published papers have shown that this condition is prevalent in retired professional football players who have a history of head injury. The changes in the brain caused by repetitive trauma are thought to begin when the brain is subjected to that repetitive trauma, but symptoms may not appear until months, years, or even decades after the last traumatic impact or the end of active athletic involvement.

63. The NFL Defendants have known for many years about the reported papers and studies documenting autopsies on over 25 former NFL players. Reports show that over 90% of the players suffered from CTE.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 17 of 80

64. As a result, published peer-reviewed scientific studies have shown that concussive and sub-concussive head impacts while playing professional football are linked to significant risk of permanent brain injury.

The NFL Was In a Superior Position of Knowledge and Authority, and Owed a Duty to the Class

65. At all times, the NFL has had access to data relating the effect of head impacts on football players and decades of accumulated knowledge about head injuries to players.

66. The NFL's accumulated knowledge about head injuries to players, and the associated health risks therefrom, was at all times vastly superior to that readily available to the Retired NFL Football Players, their Representative Claimants, or Derivative Claimants.

67. From its inception, the NFL unilaterally created for itself the role of protecting players, informing players of safety concerns, and imposing unilaterally a wide variety of rules to protect players from injuries that were costly to the player, the game, and profits. From the beginning, the NFL held itself out and acted as the guardian of the players' best interests on health and safety issues.

68. For these reasons, Plaintiffs, the Class and Subclasses have relied on the NFL to intervene in matters of player safety, to recognize issues of player safety, and to be truthful on the issue of player safety.

69. In a recent public admission, the NFL stated that "[s]ince its earliest days, the league has continuously taken steps to ensure that the game is played as fairly as possible without unnecessary risk to its participants, including making changes and enhancements to game safety rules." (www.nflhealthandsafety.com/commitment/regulations) (2011-2012).

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 18 of 80

70. On information and belief, since its inception, the NFL received and paid for advice from medical consultants regarding health risks associated with playing football, including the health risks associated with concussive and sub-concussive injuries. Such ongoing medical advice and knowledge placed the NFL in position of ongoing superior knowledge compared to the players. Combined with the NFL's unilateral and monopolistic power to set rules and determine policies throughout its game, the NFL at all relevant times was in a position to influence and dictate how the game would be played and to define the risks to which players would be exposed.

71. As a result, the NFL unilaterally assumed a duty to act in the best interests of the health and safety of NFL players, to provide truthful information to NFL players regarding risks to their health, and to take all reasonable steps necessary to ensure the safety of players.

72. The NFL's voluntary actions and authority throughout its history show that as early as the 1920s the NFL shouldered for itself the common law duty to make the game of professional football safer for the players and to keep the players informed of safety information they needed to know.

73. The NFL's historical actions in connection with these legal duties have included, but are not limited to, the following: adding a field judge (1929); establishing hash-marks at 10 yards from the sidelines (1933); establishing the penalty of unnecessary roughness for a deliberate rough contact on the passer after the pass is made (1938); making helmets mandatory (1943); adding a back field judge (1947); establishing a rule that the ball is dead when a runner touches the ground with any part of his body except his hands while in the grasp of an opponent (1955); establishing a rule that the ball is dead immediately if the runner touches the ground with any part of his body except his hands after being contacted by a defensive player

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 19 of 80

(1956); establishing a penalty for grabbing the face mask of any opponent except a runner (1956); establishing a penalty of grabbing the face mask of any opponent (1962); requiring that goal posts be offset from the goal line (1966); establishing a rule that a player who signals for a fair catch cannot block or initiate contact with one of the kicking team's players until the ball touches a player (1967); establishing a rule that a defensive player who jumps or stands on a teammate or who is picked up by a teammate cannot attempt to block an opponent's kick (1973); establishing a rule that no receiver can be blocked below the waist after moving beyond the line of scrimmage (1974); establishing a rule that eligible receivers who take a position more than two yards from the tackle cannot be blocked below the waist (1974); establishing a rule that a defender is not permitted to run or dive into a ball carrier who has fallen to the ground untouched (1976); establishing a rule that it is illegal for a defensive lineman to strike an opponent above the shoulders during his initial charge (1977) (previously the NFL made this illegal only during the first step); establishing that it is illegal for a wide receiver to clip an opponent anywhere (1977); establishing rules as to mandatory equipment (1979); establishing that it is illegal for a player in the backfield to chop an outside rusher on a pass play (1979); establishing that it is illegal to throw a punch or forearm or to kick an opponent (1979); and establishing that it is illegal to strike, swing, or club an opponent in the head, neck or face (1980).

74. As the sport's governing entity (with monopolistic power), the NFL has made it known to players and teams alike that the NFL actively and pervasively governs player conduct and health and safety both on and off the field. In public statements since its inception, the NFL has stated that its goals include taking necessary steps for the safety, health and well-being of players and their families.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 20 of 80

75. The NFL's approach has been paternalistic and has included comprehensive rookie training programs to teach new players how to manage their personal lives, inquiries from the media, and newly acquired income.

76. For decades, the NFL voluntarily instituted programs to support player health and safety on and off the field, and the players and their families looked to the NFL for guidance on these issues.

77. By way of example only, in 1959, the NFL unilaterally established medical, life insurance, and retirement plans, funded the plans, and controlled the nature and extent of each of these plans without any player involvement. The NFL made all changes to the plans unilaterally.

78. Despite its unilateral duty and power to govern player conduct on and off the field, the NFL has for decades ignored, turned a blind eye to, and actively concealed the risks to players of repetitive sub-concussive and concussive head impacts, which can and do result in players being knocked unconscious or having "their bell rung" so that they are in a conscious but disoriented state.

79. As one example, Cleveland Browns Quarterback Otto Graham was knocked unconscious during a game against the San Francisco 49ers in 1953 and he was carried off the field. After regaining consciousness, however, Graham returned to the field and played the balance of the game, even though his jaw required fifteen stitches after the game.

80. Thus, since its inception, and continuing into the present, the NFL has been in a position that affords it a special relationship to NFL players as the guardian of their health and safety. For that reason, from its inception and continuing into the present, the NFL owed a duty of reasonable care to keep NFL players informed of neurological risks, to inform

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 21 of 80

NFL players truthfully, and not to mislead NFL players about the risks of permanent neurological damage that can occur from MTBI incurred while playing football.

81. By way of example only, during the decades of the 1930s through the 1960s, the NFL – in its supervisory role as guardian of player safety – identified tackling techniques that exposed players to increased risks of injury, including head, neck, and leg injuries. Once identified, the NFL issued regulations set forth in Paragraph 73, which served as daily warnings to players of the hazardous nature of continuing to follow hazardous tackling techniques.

82. As a result of its position of authority and repository of a composite of information throughout the League, the NFL was aware of how to protect NFL players from dangerous circumstances on the field of play and took unilateral, but insufficient, measures to do so.

83. For decades, the NFL ignored the risks and/or was willfully blind to the risks and/or actively concealed the risks from NFL players, despite its historic and proactive role as the guardian of player safety.

84. Moreover, from 1994 until 2010, the NFL publicly inserted itself into the business of head injury research and openly disputed that any short-term or long-term harmful effects arose from football-related sub-concussive and concussive injuries. The NFL propagated its own industry-funded and falsified research to support its position, despite its historic role as the guardian of player safety, and despite the fact that independent medical scientists had already come to the opposite conclusion.

85. On information and belief, over the past two decades, the NFL continued to exercise this common law duty and its unilateral authority to investigate and advise NFL

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 22 of 80

players on many diverse and important topics, and that should have included the recognition of circumstances that can precipitate MTBI, the long-term potential consequences of MTBI to NFL players, and solutions for players who have sustained MTBI.

86. During this time period, beginning in the early 1990s, the NFL voluntarily and gratuitously inserted itself into the business of sponsoring medical research regarding the link between repetitive head impacts sustained while playing football and MTBI that can and does result in short-term and long-term neurocognitive injury and decline.

87. As such, the NFL continued to undertake its existing common law duty to provide truthful scientific research and information about the risks of concussive and sub-concussive injuries to NFL players, including the Retired NFL Football Players, who relied on the NFL's research and pronouncements on that subject.

88. The NFL knew, reasonably expected, and intended that NFL players, including the Retired NFL Football Players, would rely on its research and pronouncements on that subject, in part, because of the historic special relationship between the NFL and the players and, in part, because the NFL knew that the vast majority of NFL players played under non-guaranteed contracts and would willingly (and unknowingly) expose themselves to additional neurological injury and an increased risk of harm solely to maintain those non-guaranteed contracts. The NFL encouraged players to sacrifice all for "the game" as an essential mentality for play in the NFL. The 2007 NFL Films video "*Moment of Impact*" emphasized that "3rd and 4th stringers, special team players will risk life and limb to catch the coach's eye" for a spot on an NFL roster. During a voice-over emphasizing that these players hope "to make the team by making an impact," the video depicts a Buffalo Bills defender delivering a devastating blow

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 23 of 80

directly to the head of the vulnerable Indianapolis Colts' kick-return man who had just caught the ball.

**The NFL Knew the Dangers and Risks Associated
with Repetitive Head Impacts and Concussions**

89. For decades, the NFL has been aware that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

90. In 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities found in "almost 50 percent of fighters [boxers] . . . if they ke[pt] at the game long enough" (the "Martland study"). The article was published in the *Journal of the American Medical Association*. The Martland study was the first to link sub-concussive blows and "mild concussions" to degenerative brain disease.

91. In 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

92. In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize the health risks to boxers. After a three year study, the Medical Advisory Board recommended, among other things, (a) an accident survey committee to study ongoing accidents and deaths in boxing rings; (b) two physicians at ring-side for every bout; (c) post-bout medical follow-up exams; (d) a 30-day period of no activity following a knockout and a medical follow up for the boxer, all of which was designed to avoid the development of "punch drunk syndrome," also known at the time as "traumatic encephalopathy"; (e) a physician's prerogative to recommend that a boxer surrender temporarily

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 24 of 80

his boxing license if the physician notes that boxer suffers significant injury or knockout; and (f) a medical investigation of boxers who suffer knockouts numerous times.

93. The recommendations were codified as rules of the New York State Athletic Commission.

94. In or about 1952, the *Journal of the American Medical Association* published a study of encephalopathic changes in professional boxers.

95. That same year, an article published in the *New England Journal of Medicine* recommended a three-strike rule for concussions in football (*i.e.*, recommending that players cease to play football after receiving their third concussion).

96. In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a "Parkinsonian" pattern of progressive decline.

97. A 1963 study by Drs. Mawdsley & Ferguson found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function. See "Neurological Disease in Boxers," *Lancet* 2:795-81.

98. A 1967 study examined brain activity impacts from football by utilizing EEG to read brain activity in game conditions, including after head trauma. Drs. Hughes & Hendrix, "Telemetered EEG from a Football Player in Action," *Electroencephalography & Clinical Neurophysiology* 24:183-86.

99. In 1969 (and then again in the 1973 book entitled Head and Neck Injuries in Football), a paper published in the *Journal of Medicine and Science in Sports* by a leading medical expert in the treatment of head injuries recommended that any concussive event with

transitory loss of consciousness requires the removal of the football player from play and requires monitoring.

100. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics of “Dementia Pugilistica” (“DP”), including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.

101. A 1975 study by Drs. Gronwall & Wrightson looked at the cumulative effects of concussive injuries in non-athletes and found that those who suffered two concussions took longer to recover than those who suffered from a single concussion. The authors noted that these results could be extrapolated to athletes given the common occurrence of concussions in sports.

102. In the 1960s and 70s, the development of the protective face mask in football allowed the helmeted head to be used as a battering ram. By 1975 the number of head and neck injuries from football that resulted in permanent quadriplegias in Pennsylvania and New Jersey lead to the creation of the National Football Head and Neck Registry, which was sponsored by the National Athletic Trainers Association and the Sports Medicine Center at the University of Pennsylvania.

103. In 1973, a potentially fatal condition known as “Second Impact Syndrome” – in which re-injury to the already-concussed brain triggers swelling that the skull cannot accommodate – was identified. It did not receive this name until 1984. Upon information and belief, Second Impact Syndrome has resulted in the deaths of at least 40 football players.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 26 of 80

104. Between 1952 and 1994, numerous additional studies were published in medical journals including the *Journal of the American Medical Association*, *Neurology*, and the *New England Journal of Medicine*, and *Lancet* warning of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. These studies collectively established that:

[R]epetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;

encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;

acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;

with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career;

immediate retrograde memory issues occur following concussions;

mild head injury requires recovery time without risk of subjection to further injury;

head trauma is linked to dementia;

a football player who suffers a concussion requires significant rest before being subjected to further contact; and

minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

105. In the early 1980s, the Department of Neurosurgery at the University of Virginia published studies on patients who sustained MTBI and observed long-term damage in the form of unexpected cognitive impairment. The studies were published in neurological journals and treatises within the United States.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 27 of 80

106. In 1982, the University of Virginia and other institutions conducted studies on college football teams that showed that football players who suffered MTBI suffered pathological short-term and long-term damage. With respect to concussions, the same studies showed that a person who sustained one concussion was more likely to sustain a second, particularly if that person was not properly treated and removed from activity so that the concussion symptoms were allowed to resolve.

107. The same studies showed that two or more concussions close in time could have serious short-term and long-term consequences in both football players and other victims of brain trauma.

108. In 1986, Dr. Robert Cantu of the American College of Sports Medicine published Concussion Grading Guidelines, which he later updated in 2001.

109. By 1991, three distinct medical professionals/entities, all independent from the NFL – Dr. Robert Cantu of the American College of Sports Medicine, the American Academy of Neurology, and the Colorado Medical Society – developed return-to-play criteria for football players suspected of having sustained head injuries.

110. On information and belief, by 1991, the NCAA football conferences and individual college teams' medical staffs, along with many lower-level football groups (e.g., high school, junior high school, and pee-wee league) had disseminated information and adopted criteria to protect football players even remotely suspected of having sustained concussions.

111. Further, Rule 4.2.14 of the World Boxing Council's Rules and Regulations states: “[b]oxers that suffered concussion by KO [loss of consciousness], should not participate in sparring sessions for 45 days and no less than 30 days after concussive trauma,

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 28 of 80

including, but not limited to, KO's, and should not compete in a boxing match in less than 75 days."

112. In 1999, the National Center for Catastrophic Sport Injury Research at the University of North Carolina conducted a study involving eighteen thousand (18,000) collegiate and high school football players. The research showed that once a player suffered one concussion, he was three times more likely to sustain a second in the same season.

113. In 1999, former Pittsburgh Steeler and Hall of Fame inductee Mike Webster filed with the NFL a request that he receive complete disability benefits based on the fact that he had sustained repeated and disabling head impacts while a player for the Steelers. In 1999, Webster submitted extensive medical reports and testimony that stated, among other things, that Webster suffered from "traumatic or punch drunk encephalopathy [brain disease]" sustained from playing football that left Webster totally and permanently disabled as of 1991.

114. The NFL's own physician independently examined Webster and concluded that Webster was mentally "completely and totally disabled as of the date of his retirement and was certainly disabled when he stopped playing football sometime in 1990."

115. Webster died in 2002 at the age of fifty. In December 2006, the Estate of Webster received an unpublished opinion from the United States Court of Appeals for the Fourth Circuit that affirmed the decision of the District Court that the administrator had wrongly denied him benefits. In its opinion, the Fourth Circuit stated that the NFL Plan had acknowledged that the multiple head injuries Webster sustained during his playing career (1974-1990) "... had caused Webster eventually to suffer total and permanent mental disability"

116. Thus, the NFL, through its own expert medical testimony and the expert testimony submitted by Webster knew and accepted that repetitive traumatic brain injuries

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 29 of 80

sustained by a Hall of Fame player led to long-term encephalopathy and permanent mental disability.

117. A 2000 study, which surveyed 1,090 former NFL players, found that more than 60% percent had suffered at least one concussion, and 26% percent had suffered three or more, during their careers. Those who had sustained concussions reported more problems with memory, concentration, speech impediments, headaches, and other neurological problems than those who had not been concussed.

118. Also in 2000, a study presented at the American Academy of Neurology's 52nd Annual Meeting and authored by Dr. Barry Jordan, Director of the Brain Injury Program at Burke Rehabilitation Hospital in White Plains, New York, and Dr. Julian Bailes, surveyed 1,094 former NFL players between the ages of 27 and 86 and found that: (a) more than 60% had suffered at least one concussion in their careers with 26% of the players having three or more and 15% having five or more; (b) 51% had been knocked unconscious more than once; (c) 73% of those injured said they were not required to sit on the sidelines after their head trauma; (d) 49% of the former players had numbness or tingling; 28% had neck or cervical spine arthritis; 31% had difficulty with memory; 16% were unable to dress themselves; 11% were unable to feed themselves; and (3) eight suffered from Alzheimer's.

119. A 2001 report by Dr. Frederick Mueller that was published in the *Journal of Athletic Training* reported that a football-related fatality has occurred every year from 1945 through 1999, except for 1990. Head-related deaths accounted for 69% of football fatalities, cervical spinal injuries for 16.3%, and other injuries for 14.7%. High school football produced the greatest number of football head-related deaths. From 1984 through 1999, 69 football head-related injuries resulted in permanent disability.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 30 of 80

120. In 2004, a convention of neurological experts in Prague met with the aim of providing recommendations for the improvement of safety and health of athletes who suffer concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-date research. These experts recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

121. This echoed similar medical protocol established at a Vienna conference in 2001. These two conventions were attended by predominately American doctors who were experts and leaders in the neurological field.

122. The University of North Carolina’s Center for the Study of Retired Athletes published survey-based papers in 2005 through 2007 that found a strong correlation between depression, dementia, and other cognitive impairment in NFL players and the number of concussions those players had received.

123. An article in the 2010 *New England Journal of Medicine* entitled “Traumatic Brain Injury – Football, Warfare, and Long-Term Effects,” shows that even mild “traumatic brain injury” (“TBI”) can have lasting consequences that are manifest later in the football player’s life.

124. A 2006 publication stated that “[a]ll standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.”

125. Indeed, while the NFL knew for decades of the harmful effects of concussions on a player’s brain, it actively concealed these facts from coaches, players, and the public.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 31 of 80

126. On information and belief during every decade referenced above, the NFL was advised by physicians of all kinds regarding the risks associated with playing the game of football, including the risks associated with head impacts and MTBI.

127. As described above, the NFL has known for decades that MTBI can and does lead to long-term brain injury, including, but not limited to, memory loss, dementia, Alzheimer's Disease, Parkinson's Disease, ALS, depression, and CTE and its related symptoms.

The NFL Voluntarily Undertook the Responsibility of Studying Head Impacts in Football, Yet Fraudulently Concealed Their Long-Term Effects

128. In 1994, then-NFL commissioner Paul Tagliabue agreed to fund a committee to study the issue of head injury in the NFL. The NFL voluntarily and unilaterally proceeded to form the committee to study the issue. This Committee, the Mild Traumatic Brain Injury Committee ("MTBI Committee"), voluntarily undertook the responsibility of studying the effects of concussions and sub-concussive injury on NFL players.

129. At that time, the current NFL Commissioner, Roger Goodell ("Goodell"), was the NFL's Vice President and Chief Operating Officer.

130. With the MTBI Committee, the NFL voluntarily inserted itself into the private and public discussion and research on an issue that goes to the core safety risk for players who participate at every level of the game. Through its voluntary creation of the MTBI Committee, the NFL affirmatively assumed a duty to use reasonable care in the study of concussions and post-concussion syndrome in NFL players; the study of any kind of brain trauma relevant to the sport of football; the use of information developed; and the publication of data and/or pronouncements from the MTBI Committee.

131. Rather than exercising reasonable care in these duties, the NFL engaged in fraudulent and negligent conduct, which included a campaign of misinformation designed to (a)

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 32 of 80

dispute accepted and valid neuroscience regarding the connection between repetitive traumatic brain injuries and concussions and degenerative brain disease such as CTE; and (b) to create a falsified body of research which the NFL could cite as proof that truthful and accepted neuroscience on the subject was inconclusive and subject to doubt.

132. The NFL's unparalleled status in the world of football imbued its MTBI Committee's pronouncements on concussions with a unique authoritativeness as a source of information to players. The Plaintiffs therefore reasonably relied on the NFL's pronouncements and/or silence on this vital health issue.

133. The NFL's response to the issue of brain injuries and degenerative brain disease in retired NFL players caused by concussions and repetitive brain trauma received during their years as professional football players has been, until very recently, a concerted effort of deception and denial. The NFL actively tried to and did conceal the extent of the concussion and brain trauma problem, the risk to the Retired NFL Football Players, and the risks to anyone else who played football.

134. The MTBI Committee's stated goal was to present objective findings on the extent to which a concussion problem existed in the League, and to outline solutions. Ironically, the MTBI Committee's studies were supposed to be geared toward "improv[ing] player safety" and for the purpose of instituting "rule changes aimed at reducing head injuries."

135. By 1994, when the NFL formed the MTBI Committee, independent scientists and neurologists alike were already convinced that all concussions – even seemingly mild ones – were serious injuries that can permanently damage the brain, impair thinking ability and memory, and hasten the onset of mental decay and senility, especially when they are inflicted frequently and without time to properly heal.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 33 of 80

136. The MTBI Committee was publicized by the NFL as independent from the NFL, consisting of a combination of doctors and researchers.

137. The MTBI Committee, however, was not independent. It consisted of at least five persons who were already affiliated with the NFL.

138. Instead of naming a noted neurologist to chair the newly formed MTBI Committee, or at least a physician with extensive training and experience treating head injuries, Tagliabue appointed Dr. Elliot Pellman, a rheumatologist who lacked any specialized training or education relating to concussions, and who was a paid physician and trainer for the New York Jets.

139. Dr. Pellman had reportedly been fired by Major League Baseball for lying to Congress regarding his resume.

140. Dr. Pellman would go on to chair the MTBI Committee from 1994-2007, and his leadership of the Committee came under frequent and harsh criticism related to his deficient medical training, background, and experience.

141. The fact that Dr. Pellman was a paid physician for an NFL Team was an obvious conflict of interest. At no time was Dr. Pellman independent of the NFL, because he was paid on an ongoing basis by an NFL Team.

142. The NFL failed to appoint any neuropathologist to the MTBI Committee.

143. From its inception in 1994, the MTBI Committee allegedly began conducting studies to determine the effect of concussions on the long-term health of NFL players.

144. Goodell confirmed this in June 2007 when he stated publicly that the NFL had been studying the effects of traumatic brain injury for "close to 14 years"

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 34 of 80

145. Under Dr. Pellman, the MTBI Committee spearheaded a disinformation campaign.

146. Dr. Pellman and two other MTBI Committee members, Dr. Ira Casson, a neurologist, and Dr. David Viano, a biomedical engineer, worked to discredit scientific studies that linked head impacts and concussions received by NFL players to neurocognitive disorders and disabilities.

147. The MTBI Committee did not publish its first findings on active players until 2003. In that publication, the MTBI Committee stated, contrary to years of (independent) findings, that there was no long-term negative health consequence associated with concussions.

148. The MTBI Committee published its findings in a series of 16 papers between 2003 and 2009. According to the MTBI Committee, all of their findings supported a conclusion that there was no long term negative health consequence associated with concussions or sub-concussive injuries sustained by NFL players. These findings regularly contradicted the research and experiences of neurologists who treat sports concussions and the players who endured them.

149. Completely contrary to peer-reviewed scientific publications, the NFL's team of hand-picked so-called experts on the MTBI Committee did not find concussions to be of significant concern and felt it appropriate for players suffering a concussion to continue playing football during the same game or practice in which one was suffered. This recommendation and practice by the NFL, promoted by the MTBI Committee, was irresponsible and dangerous.

150. The MTBI Committee's methodology and the conclusions reached in its research were criticized by independent experts due to the numerous flaws in the study design,

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 35 of 80

methodology, and interpretation of the data, which led to conclusions at odds with common medical knowledge and basic scientific protocol.

151. For example, in 2004 the MTBI Committee published a conclusion in which it claimed that its research found no risk of repeated concussions in players with previous concussions and that there was no “7-to-10 day window of increased susceptibility to sustaining another concussion.”

152. In a comment to this publication, one independent doctor wrote that “[t]he article sends a message that it is acceptable to return players while still symptomatic, which contradicts literature published over the past twenty years suggesting that athletes be returned to play only after they are asymptomatic, and in some cases for seven days.”

153. As a further example, an MTBI Committee conclusion in 2005 stated that “[p]layers who are concussed and return to the same game have fewer initial signs and symptoms than those removed from play. Return to play does not involve a significant risk of a second injury either in the same game or during the season.” “These data suggest,” the MTBI Committee reported, “that these players were at no increased risk” of subsequent concussions or prolonged symptoms such as memory loss, headaches, and disorientation.

154. Yet, a 2003 NCAA study of 2,905 college football players found just the opposite: “Those who have suffered concussions are more susceptible to further head trauma for seven to 10 days after the injury.”

155. Support for this same conclusion was developed as early as 1982 in studies conducted at the University of Virginia.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 36 of 80

156. Dr. Pellman and his group stated repeatedly that the NFL study showed “no evidence of worsening injury or chronic cumulative effects of multiple [MTBI] in NFL players.”

157. The 2003 report by the Center for the Study of Retired Athletes at the University of North Carolina, however, found a link between multiple concussions and depression among former professional players with histories of concussions. A 2005 follow-up study by the Center showed a connection between concussions and both brain impairment and Alzheimer’s among retired NFL players.

158. Other contrary conclusions that the MTBI Committee published at the behest, urging, and sponsorship of NFL over several years include, but are not limited to, the following:

Drs. Pellman and Viano stated that because a “significant percentage of players returned to play in the same game [as they suffered a concussion] and the overwhelming majority of players with concussions were kept out of football-related activities for less than 1 week, it can be concluded that mild [TBIs] in professional football are not serious injuries”;

that NFL players did not show a decline in brain function after a concussion;

that there were no ill effects among those who had three (3) or more concussions or who took hits to the head that sidelined them for a week or more;

that “no NFL player experienced the second-impact syndrome or cumulative encephalopathy from repeat concussions”; and

that NFL players’ brains responded and healed faster than those of high school or college athletes with the same injuries.

159. The MTBI Committee’s papers and conclusions were against the weight of the scientific evidence and based on biased data collection techniques. They received significant criticism in the scientific and medical media from independent doctors and

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 37 of 80

researchers and were met with skepticism in peer-review segments following each article's publication.

160. Moreover, the conclusions of the MTBI Committee completely contradicted the medical testimony Hall of Fame player Mike Webster submitted to the NFL in his application for disability, including the testimony the NFL's own paid expert submitted in connection with Mr. Webster's application.

161. Renowned experts Dr. Robert Cantu and Dr. Julian Bailes wrote harshly critical reviews of the studies' conclusions.

162. Dr. Cantu observed that the extremely small sample size and voluntary participation in the NFL's study suggested there was bias in choosing the sample. According to Dr. Cantu, no conclusions should be drawn from the NFL study.

163. A different scientist who reviewed the MTBI Committee's work further stated that the NFL appeared to be primarily preparing a defense for when injured players eventually sued, and that it seemed to be promoting a flawed scientific study to justify its conclusion that concussions do not have adverse effects on players.

164. Dr. Kevin Guskiewicz has stated that the "data that hasn't shown up makes their work questionable industry-funded research."

165. The MTBI Committee's work was criticized when repeated inconsistencies and irregularities in the MTBI Committee's data were revealed.

166. The MTBI Committee failed to include hundreds of neuropsychological tests done on NFL players in the results of the Committee's studies on the effects of concussions and was selective in its use of injury reports.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 38 of 80

167. The results reported by Dr. Pellman and the MTBI Committee selectively excluded at least 850 baseline tests. In a paper published in Neurosurgery in December 2004, Dr. Pellman and the other MTBI Committee members reported on the baseline data for 655 players and the results for 95 players who had undergone both baseline testing and post-concussion testing. They concluded that NFL players did not show a decline in brain function after suffering concussions. Their further analysis purportedly found no ill effects among those who had three or more concussions or who took hits to the head that kept them out for a week or more. The paper did not explain where the players in the study groups came from specifically or why certain player data was included and that data from hundreds of other players was not.

168. Dr. Pellman subsequently fired William Barr, a neuropsychologist for the New York Jets, after Dr. Barr presented at a conference some NCAA study findings that contradicted NFL practices.

169. As described in the following paragraphs, when faced with studies which tended to show a causal link between MTBI and cognitive degeneration, the NFL, through the MTBI Committee, produced contrary findings that were false, distorted, and deceptive to NFL players, participants in football nationwide, and the public at large.

170. Between 2002 and 2007, Dr. Bennet Omalu examined the brain tissue of deceased NFL players, including Mike Webster, Terry Long, Andre Waters, and Justin Strzelczyk. Dr. Omalu concluded that the players suffered from CTE.

171. All of these individuals suffered multiple concussions during their NFL careers. Later in life, each exhibited symptoms of deteriorated cognitive functions, paranoia, panic attacks, and depression.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 39 of 80

172. Some of Dr. Omalu's findings were published in *Neurosurgery*. Those findings included that Webster's and Long's respective deaths were partially caused by CTE and were related to multiple concussions suffered during their activity in the NFL.

173. In response to Dr. Omalu's articles, the MTBI Committee wrote a letter to the editor of *Neurosurgery* asking that Dr. Omalu's article be retracted.

174. In an article published in *Neurosurgery* in 2007, Dr. Cantu reached a similar conclusion regarding Waters as Dr. Omalu had reached as to Webster and Long.

175. A 2003 study partially authored by Dr. Kevin Guskiewicz analyzed data from almost 2,500 retired NFL players and found that 263 of the retired players suffered from depression. The study found that having three or four concussions meant twice the risk of depression as never-concussed players and five or more concussions meant a nearly threefold risk.

176. The NFL's MTBI Committee attacked these studies.

177. In November 2003, Dr. Guskiewicz was scheduled to appear on HBO's "Inside the NFL" to discuss his research. Dr. Pellman called Dr. Guskiewicz in advance and questioned whether it was in the best interest of Dr. Guskiewicz to appear on the program. On the program, Dr. Pellman stated unequivocally that he did not believe the results of the study led by Dr. Guskiewicz.

178. In 2005, Dr. Guskiewicz performed a clinical follow-up study, and found that retired players who sustained three or more concussions in the NFL had a fivefold prevalence of mild cognitive impairment in comparison to NFL retirees without a history of concussions. In doing this research, Dr. Guskiewicz conducted a survey of over 2,550 former NFL athletes.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 40 of 80

179. The MBTI Committee attacked and sought to undermine the study, issuing the following excuse and delay tactic: “We want to apply scientific rigor to this issue to make sure that we’re really getting at the underlying cause of what’s happening. . . . You cannot tell that from a survey.”

180. In August 2007, the NFL, in keeping with its scheme of fraud and deceit, issued a concussion pamphlet to players which stated:

Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems if each injury is managed properly. It is important to understand that there is no magic number for how many concussions is too many. Research is currently underway to determine if there are any long-term effects of concussion[s] in NFL athletes.

181. In a statement made around the time that the concussion pamphlet was released, Goodell said, “We want to make sure all NFL players . . . are fully informed and take advantage of the most up to date information and resources as we continue to study the long-term impact on concussions.” The NFL decided that the “most up to date information” did not include the various independent studies indicating a causal link between multiple concussions and cognitive decline in later life.

182. Goodell also stated, “[b]ecause of the unique and complex nature of the brain, our goal is to continue to have concussions managed conservatively by outstanding medical personnel in a way that clearly emphasizes player safety over competitive concerns.”

183. The Retired NFL Football Players relied to their detriment on the NFL’s misinformation, all of which was contrary to the findings of the independent scientists who had studied the issue, including Drs. Guskiewicz, Cantu, Omalu, and Bailes, regarding the causal link between multiple head injuries and concussions and cognitive decline.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 41 of 80

184. The NFL's conflict of interest and motive to suppress information regarding the risks of repetitive traumatic brain injuries and concussions was vividly demonstrated by Dr. Pellman's treatment of a concussion sustained by former star New York Jets player Wayne Chrebet. This occurred in 2003, the same time period when Dr. Pellman chaired the MTBI Committee.

185. In November 2003, Chrebet sustained a concussion from another player's knee to the back of his head. The impact left him face down on the field in an unconscious state for several minutes. Once Chrebet was on the sideline and conscious, Dr. Pellman administered tests. Dr. Pellman knew that Chrebet had sustained a concussion, but reportedly Chrebet performed adequately on standard memory tests. According to reports, Dr. Pellman asked Chrebet some questions, including whether he was "okay." Chrebet responded that he was. Reportedly, Dr. Pellman told Chrebet that, "This is very important for your career," and sent Chrebet back into the game. Shortly thereafter, Chrebet was diagnosed with post-concussion syndrome and kept out of games for the remainder of the 2003 season.

186. Today, Chrebet is 40 years old and reportedly suffers from depression and memory problems.

187. In 2005, the MTBI Committee published a paper that stated "[p]layers who are concussed and return to the same game have fewer initial signs and symptoms than those removed from play. Return to play does not involve a significant risk of a second injury either in the same game or during the season."

188. Facing increasing media scrutiny over the MTBI Committee's questionable studies, Dr. Pellman eventually resigned as the head of the Committee in February

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 42 of 80

2007. He was replaced as head by Dr. Ira Casson and Dr. David Viano, but remained a member of the Committee.

189. Dr. Guskiewicz, research director of the University of North Carolina's Center for the Study of Retired Athletes, said at the time that Dr. Pellman was "the wrong person to chair the committee from a scientific perspective and the right person from the league's perspective."

190. Regarding Dr. Pellman's work, Dr. Guskiewicz stated, "[w]e found this at the high school level, the college level and the professional level, that once you had a concussion or two you are at increased risk for future concussions," but "[Dr. Pellman] continued to say on the record that's not what they find and there's no truth to it."

191. Drs. Casson and Viano continued to dismiss outside studies and overwhelming evidence linking dementia and other cognitive decline to brain injuries. In 2007, in a televised interview on HBO's Real Sports, Dr. Casson definitively and unequivocally stated that there was no link between concussions and depression, dementia, Alzheimer's, or "anything like [that] whatsoever."

192. In June 2007, the NFL convened a concussion summit for team doctors and trainers. Independent scientists, including Drs. Cantu, and Guskiewicz, presented their research to the NFL.

193. Dr. Julian Bailes, a neurosurgeon from West Virginia University, briefed the MTBI Committee on the findings of Dr. Omalu and other independent studies linking multiple NFL head injuries with cognitive decline. Dr. Bailes recalled that the MTBI's Committee's reaction to his presentation was adversarial: "The Committee got mad . . . we got into it. And I'm thinking, 'This is a . . . disease in America's most popular sport and how are its

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 43 of 80

leaders responding? Alienate the scientist who found it? Refuse to accept the science coming from him?””

194. At the summit, Dr. Casson told team doctors and trainers that CTE has never been scientifically documented in football players.

195. After reviewing five years of data of on-field concussions, the NFL falsely concluded that there was no evidence for an increase in secondary brain injuries after a concussion.

196. In 2008, Boston University’s Dr. Ann McKee found CTE in the brains of two more deceased NFL players, John Grimsley and Tom McHale. Dr. McKee stated: “[T]he easiest way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of concussions.” Dr. McKee further noted that “[t]here is overwhelming evidence that [CTE] is the result of repeated sublethal brain trauma.”

197. A MTBI Committee representative characterized each study as an “isolated incident” from which no conclusion could be drawn, and said he would wait to comment further until Dr. McKee’s research was published in a peer-reviewed journal. When Dr. McKee’s research was published in 2009, Dr. Casson asserted that “there is not enough valid, reliable or objective scientific evidence at present to determine whether . . . repeat head impacts in professional football result in long[-]term brain damage.”

198. In 2008, under increasing pressure, the NFL commissioned the University of Michigan’s Institute for Social Research to conduct a study on the health of retired players. Over 1,000 former NFL players took part in the study. The results of the study, released in 2009, reported that “Alzheimer’s disease or similar memory-related diseases appear to have been

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 44 of 80

diagnosed in the league's former players vastly more often than in the national population – including a rate of 19 times the normal rate for men ages 30 through 49."

199. The NFL, who commissioned the study, responded to these results by claiming that the study was incomplete, and that further findings would be needed. NFL spokesperson Greg Aiello stated that the study was subject to shortcomings and did not formally diagnose dementia. Dr. Casson implied that the Michigan study was inconclusive and stated that further work was required. Other experts in the field found the NFL's reaction to be "bizarre," noting that "they paid for the study, yet they tried to distance themselves from it."

The Congressional Inquiry and The NFL's Acknowledgement of the Concussion Crisis

200. Shortly after the results of the Michigan study were released, Representative John Conyers, Jr., Chairman of the House Judiciary Committee, called for hearings on the impact of head injuries sustained by NFL players.

201. Drs. Cantu and McKee testified before the House of Representatives, Committee on the Judiciary, to discuss the long-term impact of football-related head injuries.

202. At the first hearing in October 2009, Goodell acknowledged that the NFL owes a duty to the public at large to educate them as to the risks of concussions due to the League's unique position of influence: "In addition to our millions of fans, more than three million youngsters aged 6-14 play tackle football each year; more than one million high school players also do so and nearly seventy five thousand collegiate players as well. We must act in their best interests even if these young men never play professional football."

203. When Representative Sanchez questioned Goodell about the limited nature of the NFL's purported studies on repetitive traumatic brain injuries and concussions, the

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 45 of 80

conflicts of interest of those directing the studies, and the potential for bias, Goodell evaded answering the questions.

204. On December 17, 2009, Cincinnati Bengals wide receiver Chris Henry, 26, who played in the NFL from 2004 to 2009, died after falling from the back of a truck. Drs. Omalu and Bailes performed a postmortem study on Henry's brain and diagnosed him with CTE.

205. In January 2010, the House Judiciary Committee held further hearings on football player head injuries. Representative Conyers observed that "until recently, the NFL had minimized and disputed evidence linking head injuries to mental impairment in the future."

206. Representative Linda Sanchez commented that "[i]t seems to me that the N.F.L. has literally been dragging its feet on this issue until the past few years. Why did it take 15 years?"

207. In the 2010 Congressional hearings, Dr. Casson gave testimony that denied the validity of other non-NFL studies and stated that "[t]here is not enough valid, reliable or objective scientific evidence at present to determine whether or not repeat head impacts in professional football result in long term brain damage."

208. The members of the MTBI Committee, however, knew of the decades old studies linking MTBI to long-term neurological problems. Casson, a MTBI Committee member since its inception, stated before Congress on January 4, 2010, that he was "the lead author of a landmark paper on brain damage in modern boxers that was published in the [Journal of the American Medical Association] in 1984." That paper, which referenced the many studies documenting CTE in boxers, studied eighteen former and active boxers and found that eighty-seven percent of the professional boxers had definite evidence of brain damage. Specifically, the

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 46 of 80

study determined that the subjects performed particularly poorly on neuropsychological tests measuring short-term memory.

209. In his written statement to Congress, Casson stated that he has “been concerned about the possibility of long term effects on the brain related to football for close to thirty years.” Dr. Casson offered that one of the reasons he “was asked to be on the NFL MTBI committee was because of [his] knowledge of and experience treating boxers with chronic traumatic encephalopathy (CTE).”

210. This testimony contradicted Casson’s testimony that “there is not enough valid, reliable or objective scientific evidence at present to determine whether or not repeat head impacts in professional football result in long term brain damage.”

211. On February 1, 2010, Dr. Omalu spoke before members of the House Judiciary Committee at a forum in Houston, Texas with regard to “Head and Other Injuries in Youth, High School, College, and Professional Football.” In his prepared testimony, he explained:

Glenn Pop Warner [1871-1954] founded the Pop Warner youth football league in 1929. He still remains one of the greatest football coaches in the history of American football. The single event, which necessitated the use of pads and helmets by football players took place in 1888 when the annual rules convention for the emerging sport of college football passed a rule permitting tackling below the waist. Football changed dramatically. Teams no longer arrayed themselves across the entire breath of the field. Teams bunched themselves around the runner to block for him. The wedge and mass play arrived. Football became, for a time, a savage sport full of fights, brawling, even fatalities.” In 1912, Pop Warner said: “Playing without helmets gives players more confidence, saves their heads from many hard jolts, and keeps their ears from becoming torn or sore. I do not encourage their use. I have never seen an accident to the head which was serious, but I have many times seen cases when hard bumps on the head so dazed the player receiving them that he lost his memory for a time and had to be removed from the game.” We have known about concussions and the effects of concussions in football for over a century. Every blow to the head is dangerous. Repeated concussions and sub-

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 47 of 80

concussions both have the capacity to cause permanent brain damage. During practice and during games, a single player can sustain close to one thousand or more hits to the head in only one season without any documented or reported incapacitating concussion. Such repeated blows over several years, no doubt, can result in permanent impairment of brain functioning especially in a child.

212. After the Congressional hearings, the NFLPA called for the removal of Dr. Casson as MTBI Committee co-chair, and stated, “Our view is that he’s a polarizing figure on this issue, and the players certainly don’t feel like he can be an impartial party on this subject.”

213. In 2010, the NFL re-named the MTBI Committee the “Head, Neck, and Spine Medical Committee” (the “Medical Committee”) and announced that Dr. Pellman would no longer be a member of the panel. Drs. H. Hunt Batjer and Richard G. Ellenbogen were selected to replace Casson and Viano. The two new co-chairmen selected Dr. Mitchel S. Berger to serve on the new Medical Committee.

214. Under its new leadership, the Committee admitted that data collected by the NFL’s formerly appointed brain-injury leadership was “infected,” and said that their Committee should be assembled anew. The Medical Committee formally requested that Dr. Pellman not speak at one of its initial conferences.

215. During a May 2010 Congressional hearing, a Congressman made it plain to Drs. Batjer and Ellenbogen that the NFL: “[had] years of an infected system here, and your job is . . . to mop [it] up.”

216. Shortly after the May 2010 hearing, Dr. Batjer was quoted as admitting, “[w]e all had issues with some of the methodologies described, the inherent conflict of interest that was there in many areas, that was not acceptable by any modern standards or not acceptable

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 48 of 80

to us. I wouldn't put up with that, our universities wouldn't put up with that, and we don't want our professional reputations damaged by conflicts that were put upon us."

217. In June 2010, scientific evidence linked multiple concussions to ALS, commonly referred to as "Lou Gehrig's Disease."

218. On February 17, 2011, former Chicago Bears and New York Giants player Dave Duerson committed suicide. Fifty years old at the time, Duerson had suffered months of headaches, blurred vision, and faltering memory.

219. Before his death, Duerson wrote a final note that asked that his brain be given to the NFL brain bank for evaluation. After his death, Dr. Cantu determined that Duerson was suffering from CTE.

220. When this information was reported, NFLPA Executive Director DeMaurice Smith stated that the fact that Duerson was suffering from CTE makes it abundantly clear what the cost of football is for the men who played and the families. It seems to me that any decision or course of action that doesn't recognize that as the truth is not only perpetuating a lie, but doing a disservice to what [Duerson] feared and what he wanted to result from the donation of his brain to science.

221. In July 2011, John Mackey, former tight end of the Baltimore Colts died. Mackey was diagnosed with front temporal lobe dementia in 2007, forcing him to live full-time in an assisted living facility.

222. In October 2011, Dr. Mitchel Berger of the NFL's Head, Neck, and Spine Medical Committee announced that a new study was in the planning process. He admitted that the MTBI Committee's previous long-range study was useless because "[t]here was no science in that." Dr. Berger further stated that data from the previous study would not be used. "We're

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 49 of 80

really moving on from that data. There's really nothing we can do with that data in terms of how it was collected and assessed."

The NFL's New Committee

223. Why in 1994 (and far earlier) the NFL (and its MTBI Committee) failed to share accurate information and take appropriate actions is difficult to comprehend in light of the fact that the NFL has known for decades that multiple blows to the head can lead to long-term brain injury, including memory loss, dementia, depression, and CTE and its related symptoms. Instead, the NFL misled players, coaches, trainers, and the public, and actively spread disinformation.

224. It took decades for the NFL to admit that there was a problem and 16 years to admit that its information was false and inaccurate. The NFL's conduct in this regard is willful and exhibits a reckless disregard for the safety of its players and the public at large. At a minimum, the NFL acted with callous indifference to the duty it voluntarily assumed to the Retired NFL Football Players and players at every level of the game.

225. As a direct result of the fraudulent concealment and misrepresentations by the NFL, former players have for many decades been led to believe that the symptoms of early-onset dementia, ALS, loss of memory, headaches, confusion, and the inability to function were not caused by events occurring while they played in the NFL. And, as a result of this willful and malicious conduct, these former players have been deprived of medical treatment, incurred expenses, lost employment, suffered humiliation and other damages to be specified.

The Need for Medical Monitoring

226. Published peer-reviewed scientific studies have shown that playing professional football is associated with significant risk for permanent brain injury.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 50 of 80

227. For example, studies have shown that 28% of the NFL retirees studied, suffered from depression, whereas the prevalence of depression in the general population is 9.5%.

228. Similarly, 36% of NFL retirees, age 65-75, who were studied, suffered from dementia, whereas the prevalence of dementia in the general population for the same age group is 2.2-6.5%.

229. Retired NFL players with three or more reported concussions had a fivefold prevalence of mild cognitive impairment (MCI) and a threefold prevalence of significant memory problems, compared to other retirees. In a study of NFL retirees, 11.1% of all respondents reported having a prior or current diagnosis of clinical depression.

230. NFL retirees experienced earlier onset of Alzheimer's more frequently than the general American male population in the same age range.

231. Once there is a finding of impairment of mental functioning, the prognosis is poor; the vast majority of such patients go on to develop Alzheimer's within a decade.

232. Published peer-review scientific studies have shown that 6.1% of retired NFL players over the age of 50 receive a dementia-related diagnosis compared to the 1.2% national average for men of the same age.

233. Published peer-reviewed scientific studies have shown that the incidence of brain trauma in retired NFL players has been associated with mild cognitive impairment and depression.

234. The Boston University Center for the Study of Traumatic Encephalopathy has performed autopsy examinations of the brains of deceased NFL players indicating an estimated lifetime prevalence of CTE of 3.7% percent of all retired players.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 51 of 80

235. The evidence that CTE is caused by repeated sublethal brain trauma is overwhelming.

236. Published peer-reviewed scientific studies have shown that more than 61% of former NFL players have experienced concussions and a greater number have experienced repeated sub-concussive blows.

237. Brain injury and brain disease in NFL retirees is a latent disease that can appear years or decades after the player experiences head trauma in his NFL career.

238. Experts consider concussions the “tip of the iceberg,” and believe repetitive sub-concussive blows to the head are the cause of significant brain disease in NFL retirees.

239. Retired NFL Football Players are exposed to a significant number of sub-concussive blows and concussions as a result of their professional NFL football careers. The general public does not experience this type of brain trauma.

240. Historically, the NFL has treated repeated sub-concussive blows and concussions as “dings” and having one’s “bell rung,” and fraudulently concealed and negligently misrepresented facts that would assist Retired NFL Football Players in the Class and Subclasses in being able to obtain adequate brain injury diagnosis, management, and treatment of the condition to facilitate recovery and rehabilitation.

241. The Defendants’ fraudulent concealment and negligent misrepresentations as to the risks of chronic sub-concussive blows and concussions has increased the risks for Retired NFL Football Players in the Class and Subclasses to neurocognitive impairment and its sequelae, including cognitive, mental health, and neurological disorders during the years after retirement.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 52 of 80

242. Management of concussion requires a gradual, multistep process involving medical monitoring, baseline testing, and neurocognitive examination.

243. For sports, such as football, in which repeated blows to the head are likely, proper concussion assessment and management is paramount for preventing and mitigating long-term consequences.

244. Medical monitoring for neurocognitive impairment identifies deficits that are amenable to treatment through medical, cognitive, psychological and behavioral counseling (for the patient and his spouse and family), as well as through pharmaceutical treatment, lifestyle modifications, and other therapeutic interventions.

245. Testing of cognitive functioning for early signs or symptoms of neurologic dysfunction is medically necessary to assure early diagnosis and effective treatment of brain injury.

246. Medical monitoring for latent brain injury is highly specialized and different from the medical care that is normally recommended to other men of a similar age, in the absence of a history of chronic repeated sub-concussive impacts and concussions.

247. Well-established and specialized medical monitoring procedures exist to provide early diagnosis of neurocognitive impairment, which greatly enhances successful treatment, rehabilitation, and prevention or mitigation of cognitive, psychological, and behavioral deficits.

248. Such procedures include brain imaging studies and neuropsychological evaluations targeted on identifying the deficits associated with chronic and repeated sub-concussive blows and concussions experienced by Retired NFL Football Players in the Class and Subclasses.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 53 of 80

249. Medical monitoring for neurocognitive impairment is reasonably necessary to provide for early diagnosis, leading to benefits in treatment, management, rehabilitation, and prevention or mitigation of damage.

COUNT I

MEDICAL MONITORING

250. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 249 set forth above as if fully set forth herein.

251. Plaintiffs seek to certify a Class and Subclasses.

252. During their respective NFL careers, Retired NFL Football Players experienced repeated traumatic head impacts, including sub-concussive blows and concussions, with greater frequency and severity than the general population of men of a similar age, significantly increasing their risk of developing neurodegenerative disorders and diseases, including but not limited to CTE, Alzheimer's, ALS, Parkinson's, dementia, and other similar cognitive-impairing conditions.

253. Repetitive MTBI during NFL practices and games has a microscopic and latent effect on the brain. Repetitive exposure to accelerations to the head causes deformation, twisting, shearing, and stretching of neuronal cells such that multiple forms of damage take place, including the release of small amounts of chemicals within the brain, such as the Tau protein. Among other things, the gradual build-up of Tau protein – sometimes over decades – causes CTE, which is the same phenomenon as boxer's encephalopathy (or "punch drunk syndrome") studied and reported by Harrison Martland in 1928.

254. The game of football as played in the NFL, including both practices and game play, has exposed former players to hazardous conditions and out-of-the-ordinary risks of harm. These repetitive head accelerations to which the Retired NFL Football Players have been

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 54 of 80

exposed presented risks of latent but long-term debilitating chronic illnesses which are not presented to the normal population. Absent the Defendants' negligence, fraud, and misrepresentations, the Retired NFL Football Players' exposure to the risks of harm as described above would have been materially lower.

255. Accordingly, the repetitive head impacts sustained by NFL players in NFL games and practices exposed Retired NFL Football Players in the Class and Subclasses, to subtle and repetitive changes within the brain on the cellular level and substantive hazards.

256. Depending on many factors, including the amount of the exposure to repetitive head impacts and the release of Tau protein, the player/victim will develop a range of subtle to significant neurocognitive changes over time.

257. The latent injuries which develop over time and manifest later in life include but are not limited to varying forms of neurocognitive impairment, disability, decline, personality change, mood swings, rage, and, sometimes, fully developed encephalopathy.

258. The NFL was fully aware of the danger of exposing all NFL players to repetitive head impacts, including the repetitive sub-concussive and concussive blows that increase the risk to NFL players of, among other latent injuries, encephalopathy.

259. As noted above, by its actions and omissions and fraudulent conduct, from 1994 through 2010, the NFL further breached its duty (which it had assumed as long ago as the 1930s) of reasonable and ordinary care to the Plaintiffs, the Class and Subclasses by failing to provide NFL players, including the Retired NFL Football Players, their Representative Claimants and Derivative Claimants, with necessary, adequate, and truthful information about the heightened risks of neurological damage that arise from repetitive head impacts during NFL games and practices.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 55 of 80

260. As a proximate result of the NFL's tortious conduct, the Retired NFL Football Players in the Class and Subclasses have experienced an increased risk of developing serious latent neurodegenerative disorders and diseases, including but not limited to CTE, Alzheimer's, Parkinson's, ALS, dementia, and/or other and similar cognitive-impairing conditions.

261. The latent brain injuries from which Retired NFL Football Players in the Class and Subclasses suffer require specialized testing (with resultant treatment) that is not generally given to the public at large.

262. The available medical monitoring techniques are specific for individuals exposed to repetitive head trauma and are different from what is normally recommended in the absence of exposure to this risk of harm.

263. Medical monitoring includes, but is not limited to, baseline tests and diagnostic examinations which will assist in diagnosing the adverse health effects associated with football-related MTBI. This diagnosis will facilitate the treatment and behavioral and/or pharmaceutical interventions that will prevent or mitigate various adverse consequences of the latent neurodegenerative disorders and diseases associated with the repetitive sub-concussive and concussive injuries that Retired NFL Football Players experienced in the NFL.

264. The available medical monitoring examinations and tests are reasonably necessary according to contemporary scientific principles within the medical community specializing in the diagnosis of head injuries and their potential link to, inter alia, memory loss, impulse rage, depression, early-onset dementia, CTE, Alzheimer-like syndromes, and similar cognitive-impairing conditions.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 56 of 80

265. By monitoring and testing the Retired NFL Football Players in the Class and Subclasses, the risk that they will suffer long term injuries, disease, and losses will be significantly reduced.

266. Plaintiffs, the Class and Subclasses, therefore, seek an injunction creating a Court-supervised, NFL-funded medical monitoring program, which will facilitate the diagnosis and adequate treatment of Retired NFL Football Players for neurocognitive impairment. The medical monitoring program should include a trust fund to pay for the baseline assessments and treatment of Retired NFL Football Players as frequently and appropriately as necessary.

267. Plaintiffs, the Class and Subclasses have no adequate remedy at law in that monetary damages alone cannot compensate them for the continued risk of developing long-term physical and economic losses due to concussions and sub-concussive injuries. Without Court-approved medical monitoring as described herein, or established by the Court, the Plaintiffs, Class and Subclasses will continue to face an unreasonable risk of continued injury and disability.

COUNT II

WRONGFUL DEATH AND SURVIVAL ACTIONS

268. Retired NFL Football Players and their Representative Claimants and Derivative Claimants in the Class and Subclasses incorporate by reference paragraphs 1 through 267 set forth above as if fully set forth herein.

269. The Representative Claimants of deceased Retired NFL Football Players bring this action in their representative capacity of the decedent's Estate and next of kin and on behalf of the respective survivors of those deceased Retired NFL Football Players.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 57 of 80

270. As a direct and proximate cause of the conduct alleged herein, the NFL caused the Retired NFL Football Players to develop the debilitating brain diseases and conditions set forth above, which diseases and conditions caused extreme pain, suffering, and anguish and, ultimately, the deaths of some Retired NFL Football Players.

271. The Representative Claimants of the deceased Retired NFL Football Players and their Derivative Claimants claim damages recoverable under applicable law for all pecuniary and non-pecuniary losses suffered by the deceased Retired NFL Football Players by reason of their deaths.

272. As a direct and proximate result of the untimely deaths of the deceased Retired NFL Football Players, their respective survivors and/or surviving distributees have been deprived of the earnings, maintenance, guidance, support and comfort that they would have received from for the rest of the respective deceased Retired NFL Football Players' natural lives, and have suffered commensurate pecuniary and non-pecuniary losses because of the Retired NFL Football Players' wrongful deaths.

273. The Representative Claimants and the Derivative Claimants of deceased Retired NFL Football Players claim the full measure of damages allowed under applicable law.

COUNT III

FRAUDULENT CONCEALMENT

274. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 273 set forth above as if fully set forth herein.

275. Between the early 1950s and 1994, the NFL knew that repetitive head impacts in football games and full-contact practices created a risk of harm to NFL players that was similar or identical to the risk of harm to, for example, boxers who receive repetitive impacts to the head during boxing practices and matches.

276. The NFL has been aware of and understood the significance of the published medical literature dating from as early as the 1920s that there is a serious risk of short-term and long-term brain injury associated with repetitive traumatic impacts to the head to which NFL players are exposed.

277. During that time period, the NFL knowingly and fraudulently concealed from then-current NFL players and former NFL players the risks of head injuries in NFL games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive injury.

278. From 1994 through June of 2010, the NFL's fraudulent concealment continued.

279. During that time period, the NFL voluntarily funded and produced its own purported scientific research and through that research repeatedly misrepresented to then current and former NFL players, the United States Congress, and the general public that there is no link (or an insufficient scientific link) between MTBI in NFL activities and later-in-life cognitive/brain injury, including CTE and its related symptoms.

280. Given the NFL's superior and unique vantage point, the Retired NFL Football Players reasonably looked to the NFL for guidance on head injuries and concussions.

281. The NFL's MTBI Committee published articles and the concussion pamphlet referenced above, all of which concealed and minimized the risks of repetitive brain impacts the NFL knew existed for its then-current players and for its former players, who reasonably relied on the NFL's pronouncements and/or silence on this vital health issue.

282. The NFL's concussion pamphlet created an atmosphere of trust that the NFL had carefully undertaken its voluntary responsibility to research, test, study, and report

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 59 of 80

accurate findings to the players and former players. The NFL stated that “[w]e want to make sure all NFL players ... are fully informed and take advantage of the most up to date information and resources as we continue to study the long-term impact of concussions.”

283. The concealment was ongoing. Dr. Casson provided oral and written testimony at the 2010 Congressional hearings in which he continued to deny the validity of other studies. Dr. Casson also denied the link between repetitive brain impacts and short- and long-term brain damage in public interviews.

284. The NFL, therefore, concealed material facts and information with the intent to deceive and defraud, which caused Retired NFL Football Players in the Class and Subclasses to become exposed to the harm referenced above.

285. For those Retired NFL Football Players who had retired prior to the above-mentioned misrepresentations, the NFL’s concerted concealment of the risks to which they had been exposed on the playing field delayed their ability to plan for the future of themselves and their families and to seek appropriate treatment of their latent neurodegenerative conditions.

286. The NFL knew and expected that Plaintiffs, the Class and Subclasses would rely on the inaccurate information provided by the NFL, and Plaintiffs, the Class and Subclasses in fact did reasonably rely on the inaccurate information provided by the NFL during and after the careers of the Retired NFL Football Players.

287. As a direct and proximate result of the NFL’s fraudulent conduct, the Retired NFL Football Players in the Class and Subclass have suffered physical injury, including, but not limited to, existing and latent cognitive conditions that create memory loss, diminished cognitive function, non-economic losses, and economic losses.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 60 of 80

288. As a direct and proximate result of the NFL's willful concealment, Retired NFL Football Players in the Class and Subclasses have suffered and will continue to suffer substantial injuries, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

289. As a result of the NFL's misconduct as alleged herein, the NFL is liable to Plaintiffs, the Class and Subclasses for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

290. As a result of the NFL's fraudulent conduct as alleged herein, Plaintiffs and the members of the Class and Subclasses are entitled to injunctive relief in the form of a medical monitoring program and an education fund to promote safety and injury prevention in football players and to educate Retired NFL Football Players regarding the NFL's medical and disability benefits programs and other educational programs and initiatives.

291. As a result of the NFL's fraudulent conduct as alleged herein, Plaintiffs and the members of the Class and Subclasses are entitled to compensatory damages, as allowed by law, from the NFL.

COUNT IV

FRAUD

292. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 291 set forth above as if fully set forth herein.

293. At least since the early 1950's the NFL knew that repetitive head impacts in football games and full-contact practices created a risk of harm to NFL players that was similar or identical to the risk of harm to boxers who receive the same or similar repetitive impacts to the head during boxing practices and matches.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 61 of 80

294. At least since the early 1950's the NFL knew that repetitive head impacts in football games and full-contact practices created a risk of harm to NFL players that was similar or identical to the risk of harm to boxers who receive the same or similar repetitive impacts to the head during boxing practices and matches.

295. The NFL, however, withheld the information it knew about the risks of head injuries in the game from then-current NFL players and former NFL players and ignored the known risks to all NFL players.

296. On information and belief, the NFL deliberately delayed implementing the changes to the game it knew could reduce players' exposure to the risk of life-altering head injuries because those changes would be expensive and would reduce the profitability of the League.

297. The NFL has been aware of and understood the significance of the published medical literature dating from as early as the 1920s that there is a serious risk of short-term and long-term brain injury associated with repetitive traumatic impacts to the head to which NFL players are exposed.

298. The NFL and its agents – employed to formulate the MTBI committee and populate the published scientific literature with “studies” intent on disputing the conclusions of independent researchers regarding the long-term chronic disabilities and injuries associated with head injury – made these material misrepresentations with the intent to defraud the Plaintiffs, the Class and Subclasses.

299. Given the NFL’s superior and unique vantage point, the Plaintiffs, the Class and Subclasses reasonably looked to the NFL for guidance on head injuries and concussions.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 62 of 80

300. During that time period, the NFL knowingly and fraudulently concealed from then-current NFL players and former NFL players the risks of head injuries in NFL games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive injury.

301. The NFL, however, withheld this information from then-current NFL players and former NFL players and ignored the known risks to all NFL players.

302. Beginning in 1994, the NFL and its agents funded and created a falsified body of purported scientific research that misrepresented to then-current NFL players, all former NFL players, the United States Congress, and the general public that there was no scientifically proven link between repetitive sub-concussive and concussive injuries sustained during football and brain injury, including but not limited to CTE and its related symptoms.

303. During their playing days and after their retirement from the NFL, the Plaintiffs, the Class and Subclasses justifiably and reasonably relied on the NFL's omissions and misrepresentations to their detriment.

304. As a result of the NFL's misconduct as alleged herein, the NFL is liable to Plaintiffs, the Class and Subclasses.

305. The Plaintiffs, the Class and Subclasses were damaged by the NFL's misconduct. They have suffered and will continue to suffer substantial injuries, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

306. As a result of the NFL's fraud, the NFL is liable to Plaintiffs, the Class and Subclasses for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 63 of 80

COUNT V

NEGLIGENT MISREPRESENTATION

307. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 306 set forth above as if fully set forth herein.

308. A special relationship exists between the NFL and the Plaintiffs, the Class and Subclasses sufficient to impose a duty on the NFL to disclose accurate information to the Plaintiffs.

309. Prior to 1994, the NFL knew that repetitive head impacts in football games and practices created a risk of harm to NFL players that was similar or identical to the risk of harm to boxers who receive repetitive impacts to the head during boxing practices and matches.

310. Prior to 1994, the NFL was aware of and understood the significance of the published medical literature demonstrating the serious risk of both short-term and long-term adverse consequences from the kind of repetitive traumatic impacts to the head to which NFL players were exposed.

311. The NFL, however, withheld this information from NFL players and ignored the risks to NFL players.

312. From 1994 through June of 2010, the NFL made material misrepresentations to its players, former players, the United States Congress, and the public at large that there was no scientifically proven link between repetitive traumatic head impacts and later-in-life cognitive/brain injury, including CTE and its related symptoms.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 64 of 80

313. Defendant NFL, therefore, misrepresented the dangers the NFL Players faced in returning to action after sustaining a head injury and the long-term effects of continuing to play football after a head injury.

314. The NFL's MTBI Committee made public statements, published articles, and issued the concussion pamphlet to its players, which the NFL knew or should have known were misleading, downplaying and obfuscating to NFL players the true and serious risks of repetitive traumatic head impacts.

315. The MTBI Committee made material misrepresentations on multiple occasions, including but not limited to testimony at congressional hearings and other information issued to current and former NFL Players.

316. The Plaintiffs' reliance on the NFL was reasonable, given the NFL's superior and unique vantage point on these issues.

317. The Defendant's misrepresentations included the false statement that present NFL players were not at an increased risk of short-term and long-term adverse consequences if they returned too soon to an NFL games or practices after suffering head trauma and, therefore, that former players had not been exposed to such increased risk during their time in the NFL.

318. The NFL's misrepresentations included ongoing and baseless criticism of legitimate scientific studies that set forth the dangers and risks of head impacts which NFL players regularly sustained.

319. The NFL made these misrepresentations and actively concealed true information at a time when it knew, or should have known, because of its superior position of

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 65 of 80

knowledge, that the NFL Players faced serious health problems if they returned to a game too soon after sustaining a concussion.

320. The NFL knew or should have known the misleading nature of their statements when they were made.

321. The NFL made the misrepresentations and actively concealed information knowing that the Plaintiffs, the Class and Subclasses would and did rely on the misrepresentations or omissions in, among other things, how the Plaintiffs addressed the concussive and sub-concussive injuries they sustained.

322. As a result of the NFL's misrepresentations, it is liable to Plaintiffs, the Class and Subclasses.

323. As a direct and proximate result of the NFL's negligent misrepresentations, Retired NFL Football Players in the Class and Subclasses have suffered and continue to suffer serious personal injury, including neurocognitive brain disease and associated damages including mental disability, loss of income, pain and suffering, emotional distress, and loss of consortium. Plaintiffs, the Class and Subclasses seek the full measure of damages allowed under applicable law.

COUNT VI

NEGLIGENCE: PRE-1968 CONDUCT OF THE NFL

324. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 323 set forth above as if fully set forth herein.

325. In 1922, the American Professional Football Association became the National Football League and in 1933, the NFL began developing rules and regulations of play

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 66 of 80

that were significantly different than those previously followed and were used by collegiate football leagues.

326. In 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

327. Between 1933 and 1968, the NFL assumed and carried out a duty to supervise how the game of football was played in the United States.

328. Between 1933 and 1968, the NFL assumed and carried out a duty to inform and advise players and teams of the foreseeable harm that can arise from such things as the use of leather helmets, the need to wear hard plastic helmets to reduce head wounds and internal injury (1943) and the grabbing of an opponent's facemask—to minimize or avoid head and neck injuries (1956/1962). These warnings and imposed safety rules were furnished by the NFL because it had assumed a duty to provide a safe environment for players and because of its superior knowledge of the risks of injury players.

329. Based on information and belief, the NFL voluntarily inserted itself into the tasks assumed by others to develop helmet safety standards to reduce the risk of head injury while playing football. Despite its voluntary participation in these activities, the defendant negligently failed to adopt these standards for a considerable period of time after others had done so.

330. During this time period, the NFL was advised or should have been advised by medical scientists and health professionals, including neurologists and neurosurgeons, regarding the risks of short and long term neurocognitive disabilities and deficits to NFL players.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 67 of 80

331. During this time period, the NFL knew or should have known that repetitive sub-concussive and concussive blows to the heads of NFL players can and do result in short-term and long-term brain damage.

332. During this time period, the NFL knew or should have known that it was the practice in the NFL to compel or cajole players to play with injuries, including sub-concussive injuries, concussive injuries and injuries involving a loss of consciousness.

333. During this time period, the NFL had superior knowledge (as compared to the NFL players themselves) that athletic sporting events causing sub-concussive and concussive injuries posed a serious risk of short-term and long-term cognitive disabilities.

334. The NFL's failure to address the continuing health risks associated with sub-concussive and/or concussive injuries that NFL players sustained before 1968 constituted a breach of its duty to these players, which has resulted in long-term neurocognitive problems and disabilities to former NFL players, including the Retired NFL Football Players.

335. During this time period, the NFL's continuing perpetration of the dangerous myth that NFL players are tough and can withstand "getting their bell rung," "suffering dings," or temporarily losing consciousness while playing constitutes causative negligence. The perpetration of misleading and false statements and a philosophy of invincibility nurtured and publicized by the NFL throughout this time period constitute continuing negligent conduct which the NFL never stopped perpetrating until subject to Congressional scrutiny and the filing of civil lawsuits.

336. Given the NFL's superior and unique vantage point on the issue of head injuries and concussions, the Plaintiffs reasonably relied to their detriment on the NFL's actions and omissions on the subject.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 68 of 80

337. The failure of the NFL to publicize within the League – to active players – and to the public at large, including retired players, the mounting evidence in the scientific literature of the evolving and chronic neurocognitive problems amongst former players caused then-current players and retired players to believe that their physical and psychological problems (as described herein) were neither serious nor related to football. These commissions or omissions caused the plaintiffs to ignore the need for necessary treatment. Likewise, these omissions and commissions had the institutional effect of reducing the interest in helmet safety research, avoiding changes in rule-playing to minimize head injury, avoiding the need to promulgate rules affecting the return to play rules when concussive events are detected, and establishing programs to educate players about the risks of sub-concussive and concussive long-term risk to their health.

COUNT VII

NEGLIGENCE: POST-1968 CONDUCT OF THE NFL

338. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 337 set forth above as if fully set forth herein.

339. Increasingly, during the 1970s, 1980s and 1990s, the NFL Defendants marketed the game of football as acceptably aggressive and it rewarded its most aggressive players. This marketing technique was directed to the general public, the football community of players associated with organized football from sandlot to college. In pursuing these concerted marketing techniques, the NFL Defendants knew or should have known that its conflation of concussive-inducing aggression with heroism would induce NFL players and those who espoused to play in the NFL to play recklessly.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 69 of 80

340. In its marketing scheme, the NFL Defendants developed print and film packages that were widely distributed throughout the United States to media outlets and organized football programs as a powerful method to convince current players and those in college and high school football that the greater the hit the bigger the accolades.

341. In the early 1990s, the NFL voluntarily undertook to study the issue of neurocognitive injuries in former NFL players.

342. In 1994, in connection with that voluntary undertaking, the NFL created the aforementioned MTBI Committee.

343. The NFL recognized that its voluntary undertaking to study and report information about the effect of head impacts on NFL players would not just be for the benefit of then-present and former NFL players alone. Since the NFL is the most prominent and influential entity in the sport of football, the NFL knew or should have known that its MTBI Committee's statements would have a broad public impact.

344. By voluntarily undertaking to study and report on the issue of the neurocognitive effects of head impacts in professional football, the NFL assumed a duty to exercise reasonable care in the MTBI Committee's work and the NFL and its agents' public statements about the substance of the Committee's work.

345. However, the MTBI Committee negligently performed the NFL's voluntarily undertaken research mission.

346. In addition, from 1994 through June of 2010, the NFL and its MTBI Committee made material misrepresentations to players, former players, the United States Congress, and the public at large that there was no scientifically valid link between repetitive

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 70 of 80

traumatic head impacts and later-in-life cognitive/brain injury, including CTE and its related symptoms.

347. The NFL's failure to exercise reasonable care in its voluntarily assumed duty increased the risk that the Plaintiffs would suffer long-term neurocognitive injuries.

348. The Plaintiffs, the Class and Subclasses reasonably relied to their detriment on the NFL's actions and omissions on the subject.

349. Under all of the above circumstances, it was foreseeable that the NFL's failure to exercise reasonable care in the execution of its voluntarily undertaken duties would cause or substantially contribute to the personal injuries suffered by the Retired NFL Football Players.

350. The NFL's failure to exercise reasonable care in the execution of its voluntarily undertaken duties proximately caused or contributed to Plaintiffs' injuries.

351. As a result of the NFL's negligence, the NFL is liable to Plaintiffs, the Class and Subclasses, and the Plaintiffs are entitled to, and seek, all damages allowed by applicable law.

COUNT VIII

NEGLIGENCE: CONDUCT OF THE NFL (BETWEEN 1987 AND 1993)

352. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 351 set forth above as if fully set forth herein.

353. This Count relates to the misconduct of the NFL Defendants during the years 1987 and 1993, and pertains only to Retired NFL Football Players who played in the NFL during this time period.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 71 of 80

354. During this time period, the NFL Defendants actively recognized its common law duties (described in Counts VI and VII above) and continued, albeit negligently, to carry them out.

355. Consequently, each factual and legal claim set forth in Counts VI and VII set forth above is incorporated by reference herein as if they were set forth at length.

COUNT IX

NEGLIGENCE: POST-1994 CONDUCT OF THE NFL

356. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 355 set forth above, with the exception of paragraphs 31, 65 and 67-88.

357. Increasingly, during the 1970s, 1980s and 1990s, the NFL Defendants marketed the game of football as acceptably aggressive, and it rewarded its most aggressive players. This marketing technique was directed to the general public, the football community of players associated with organized football from sandlot to college. In pursuing these concerted marketing techniques, the NFL Defendants knew or should have known that its conflation of concussive-inducing aggression with heroism would induce NFL players and those who espoused to play in the NFL to play recklessly.

358. In its marketing scheme, the NFL Defendants developed print and film packages that were widely distributed throughout the United States to media outlets and organized football programs as a powerful method to convince current players and those in college and high school football that the greater the hit, the bigger the accolades.

359. In the early 1990s, the NFL voluntarily undertook to study the issue of neurocognitive injuries in former NFL players.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 72 of 80

360. In 1994, in connection with that voluntary undertaking, the NFL created the aforementioned MTBI Committee.

361. The NFL recognized that its voluntary undertaking to study and report information about the effect of head impacts on NFL players would not just be for the benefit of then-present and former NFL players alone. Since the NFL is the most prominent and influential entity in the sport of football, the NFL knew or should have known that its MTBI Committee's statements would have a broad public impact.

362. By voluntarily undertaking to study and report on the issue of the neurocognitive effects of head impacts in professional football, the NFL assumed a duty to exercise reasonable care in the MTBI Committee's work and the NFL and its agents' public statements about the substance of the Committee's work.

363. However, the MTBI Committee negligently performed the NFL's voluntarily undertaken research mission.

364. In addition, from 1994 through June of 2010, the NFL and its MTBI Committee made material misrepresentations to players, former players, the United States Congress, and the public at large that there was no scientifically valid link between repetitive traumatic head impacts and later-in-life cognitive/brain injury, including CTE and its related symptoms.

365. The NFL's failure to exercise reasonable care in its voluntarily assumed duty increased the risk that the Plaintiffs would suffer long-term neurocognitive injuries.

366. Given the NFL's superior and unique vantage point on the issue of head injuries and concussions, the Plaintiffs, the Class and Subclasses reasonably relied to their detriment on the NFL's actions and omissions on the subject.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 73 of 80

367. The NFL's failure to exercise reasonable care in the execution of its voluntarily undertaken duties proximately caused or contributed to Retired NFL Football Players' injuries.

368. As a result of the NFL's negligence, the NFL is liable to Plaintiffs, the Class and Subclasses, and the Plaintiffs are entitled to, and do seek, all damages allowed by applicable law.

COUNT X

LOSS OF CONSORTIUM

369. Retired NFL Football Players and their Spouses incorporate by reference paragraphs 1 through 368 set forth above as if fully set forth herein.

370. As a result of the NFL Defendants' misconduct, the NFL Defendants are liable to the Spouses of Retired NFL Football Players.

371. As a direct and proximate result of the intentional misconduct, carelessness, negligence, and recklessness, the Retired NFL Football Players have sustained the aforesaid injuries, and their Spouses have been damaged as follows:

- a. They have been and will continue to be deprived of the services, society and companionship of their respective husbands;
- b. They have, will be and will continue to be required to spend money for medical care and household care for the treatment of their respective husbands; and
- c. They have been and will continue to be deprived of the earnings of their respective husbands.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 74 of 80

372. As a result of the injuries to Retired NFL Football Players, their Spouses are entitled to damages, as alleged herein or allowed by law.

COUNT XI

NEGLIGENT HIRING

373. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 372 set forth above as if fully set forth herein.

374. The NFL voluntarily and gratuitously inserted itself into the business of studying (and subsequently rendering expert opinions about) the relationship between repetitive head impacts in football and brain injury.

375. In doing so, the NFL assumed a duty to the Plaintiffs and the general public to retain and employ persons within the MTBI Committee who were professionally competent to study and render opinions on the relationship between repetitive head impacts in football and brain injury and to ensure that those whom it hired had no conflict of interest and that each had the professional and personal qualifications to conduct those studies and render opinions that were scientifically rigorous, valid, defensible, and honest.

376. The NFL breached its duty to the Plaintiffs, the Class and Subclasses and the general public by hiring persons who:

- a. were unqualified;
- b. were not competent to engage in rigorous and defensible scientific research;
- c. were not competent to render valid and defensible opinions;
- d. created fraudulent industry-funded research; and/or

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 75 of 80

e. attacked as not credible the valid and defensible research and opinions generated by neuroscientists who were unconnected to and not paid by the NFL.

377. The NFL's negligence in this regard resulted in a body of falsified industry-funded research that purposefully and/or negligently contested and suppressed valid and truthful bio-medical science. The NFL's negligence allowed the MTBI Committee to use falsified industry-funded research to mislead the Plaintiffs, the Class and Subclasses, and the general public regarding the risks associated with repetitive head impacts in the game of football.

378. As a result of the NFL's negligence, the Retired NFL Football Players have sustained brain injuries that are progressive and latent and did not take protective measures or seek the diagnosis and treatment they would have sought had they been told the truth.

COUNT XII

NEGLIGENT RETENTION

379. Plaintiffs, the Class and Subclasses incorporate by reference paragraphs 1 through 378 set forth above as if fully set forth herein.

380. The NFL knew or should have known that the controlling members of the MTBI Committee demonstrated an ongoing lack of competence, objectivity and inadequate judgment to study and render expert opinions on the issue of the relationship between repetitive head impacts in football and brain injury.

381. The NFL voluntarily assumed a duty to the Plaintiffs and the general public not to allow those incompetent persons it had hired within the MTBI Committee to continue to conduct incompetent and falsified studies and render incompetent opinions on the relationship between repetitive head impacts in football and brain injury.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 76 of 80

382. During the time period when the MTBI was conducting its purported research and rendering its purported opinions, the NFL knew or should have known that the purported research and opinions of the MTBI were false and indefensible.

383. The NFL breached its duty to the Plaintiffs, the Class and Subclasses, and the general public by allowing these incompetent and unqualified persons, under the auspices and with the imprimatur of the NFL:

- a. to continue to create incompetent and indefensible research,
- b. to continue to render invalid and indefensible opinions, and
- c. to continue to attack the credible and defensible research and opinions of neuroscientists not connected to or paid by the NFL.

384. The NFL's negligence allowed the incompetent members of the MTBI Committee to continue to advance their false and incompetent research and opinions in an attempt to suppress valid bio-medical science. The NFL's negligence allowed the MTBI Committee members to mislead the Plaintiffs, other former NFL players, and the general public regarding the permanent brain injury risks associated with repetitive head impacts in the game of football.

385. As a result of the NFL's failure, the Retired NFL Football Players have sustained brain injuries that are progressive and latent and did not take protective measures or seek the diagnosis and treatment they would have sought had they been told the truth.

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 77 of 80

COUNT XIII

CIVIL CONSPIRACY/FRAUDULENT CONCEALMENT

386. Plaintiffs incorporate by reference paragraphs 1 through 385 set forth above as if fully set forth herein.

387. For decades, the Defendants, along with others who were employed by the NFL, including those who participated in the NFL MTBI Committee, acted in concert to perpetrate the fraudulent concealment of the connection between repetitive MTBI and long-term neurocognitive damage, illness, and decline.

388. The Defendants, along with those who participated in the concerted efforts referenced above, knowingly failed to disclose and/or made continuing misrepresentations of material fact that there was an absence of any scientific basis to believe that repetitive MTBI created any known long-term neurocognitive risks to NFL players. That misconduct by the Defendants exposed Plaintiffs to an increased risk of brain injury and was the proximate cause of the Plaintiffs' brain injuries.

389. Plaintiffs have suffered personal injuries as a result of the named Defendants' concerted activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and members of the Class and Subclasses pray for judgment with respect to their Complaint as follows:

1. With respect to Count I, certifying the Class and Subclasses proposed in this Complaint pursuant to Fed. R. Civ. P. 23(a)(1-4) & 23(b)(2) (with a right to opt out) or alternatively pursuant to Fed. R. Civ. P. 23(b)(3);

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 78 of 80

2. With respect to Count I, granting an injunction for the requested medical monitoring relief;
3. With respect to Counts II through XIII, certifying the Class and Subclasses proposed in this Complaint pursuant to Fed. R. Civ. P. 23(a)(1-4) & 23(b)(3);
4. With respect to all counts, awarding Plaintiffs and Class and Subclass members damages, their costs and disbursements in this action, including reasonable attorneys' fees, to the extent permitted by law;
5. With respect to all counts, granting Plaintiffs and Class and Subclass members such other and further relief as may be appropriate;
6. Granting an award to all Plaintiffs in the Class and Subclasses prejudgment interest, costs and attorneys' fees.

DEMAND FOR JURY TRIAL

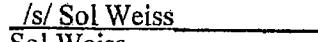
Plaintiffs demand a trial by jury on all matters so triable.

Dated: January 6, 2014

Respectfully Submitted:


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Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 79 of 80

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Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 80 of 80

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2014, I caused the foregoing Motion to Intervene, proposed Order, and Memorandum of Law to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ William T. Hangley

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO INTERVENE

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	2
I. Background of Proposed Intervenors	2
II. The Class Action Complaint.....	5
III. The Proposed Settlement	10
ARGUMENT	12
I. This Court Should Grant Intervenors' Motion Under Rule 24(a) To Ensure Adequate Protection of Their Interests and Those of Similarly Situated Putative Class Members	13
A. Intervenors' Interests – and Those of Players Like Them – Are Not Currently Represented Before the Court.....	14
1. Representative Plaintiffs Negotiated and Advocated a Settlement That Addressed Their Own Injuries but Failed To Address the Injuries of Intervenors and Other Class Members	15
2. The 75% Offset for Stroke and Traumatic Brain Injury Also Demonstrates Conflict Between the Intervenors' Interests and Those of the Representative Plaintiffs.....	19
B. The Intervenors' Request Is Timely and Will Neither Prejudice the Parties Nor Cause Undue Delay	21
II. Alternatively, Permissive Intervention Should Be Granted Under Rule 24(b)	23
III. The Intervenors Have Complied with the Procedural Requirements for Intervention	25
CONCLUSION	27

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Abramson v. Pennwood Inv. Corp.</i> , 392 F.2d 759 (2d Cir. 1968).....	27
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	18, 21
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011)	25
<i>Brody v. Spang</i> , 957 F.2d 1108 (3d Cir. 1992).....	13
<i>In re Cmtys. Bank of N. Va.</i> , 418 F.3d 277 (3d Cir. 2005)..... <i>passim</i>	
<i>Contawee v. Crescent Heights of Am., Inc.</i> , No. Civ. A. 04-2304, 2004 WL 2966931 (E.D. Pa. Dec. 21, 2004).....	27
<i>Dewey v. Volkswagen Aktiengesellschaft</i> , 681 F.3d 170 (3d Cir. 2012)	<i>passim</i>
<i>Diaz v. Trust Territory of Pac. Islands</i> , 876 F.2d 1401 (9th Cir. 1989).....	13, 15
<i>Gaskin ex rel. Gaskin v. Pennsylvania</i> , 197 F. App'x 141 (3d Cir. 2006)	27
<i>In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.</i> , 55 F.3d 768 (3d Cir. 1995).....	14, 22, 24, 25
<i>Glass v. UBS Fin. Servs., Inc.</i> , No. C-06-4068 MMC, 2007 WL 474936 (N.D. Cal. Jan. 17, 2007).....	13, 15
<i>Koprowski v. Wistar Inst. of Anatomy & Biology</i> , No. CIV. A. 92-CV-1182, 1993 WL 332061 (E.D. Pa. Aug. 19, 1993)	13
<i>Kozak v. Wells</i> , 278 F.2d 104 (8th Cir. 1960).....	13
<i>Lexington Ins. Co. v. Caleco, Inc.</i> , No. Civ. A. 01-5196, 2003 WL 21652163 (E.D. Pa. Jan. 25, 2003)	27
<i>Lusardi v. Xerox Corp.</i> , 975 F.2d 964 (3d Cir. 1992)	23
<i>In re Mapp</i> , No. 85-2745, 1986 WL 8340 (E.D. Pa. July 25, 1986)	26
<i>Mars Steel v. Cont'l Ill. Nat'l Bank & Trust</i> , 834 F.2d 677 (7th Cir. 1987)	22
<i>McKowan Lowe & Co. v. Jasmine, Ltd.</i> , 295 F.3d 380 (3d Cir. 2002)	22
<i>Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.</i> , 72 F.3d 361 (3d Cir. 1995).....	22

<i>NAACP v. New York</i> , 413 U.S. 345 (1973)	21
<i>Olden v. Gardner</i> , 294 F. App'x 210 (6th Cir. 2008).....	24
<i>Pereira v. Foot Locker, Inc.</i> , No. 07-cv-2157, 2009 WL 4673865 (E.D. Pa. Dec. 7, 2009).....	26
<i>Phila. Recycling & Transfer Sta., Inc.</i> , No. Civ. A. 95-4597, 1995 WL 517644 (E.D. Pa. Aug. 29, 1995)	25, 27
<i>Piambino v. Bailey</i> , 757 F.2d 1112 (11th Cir. 1985).....	26
<i>In re Safeguard Scientifics</i> , 220 F.R.D. 43 (E.D. Pa. 2004)	14
<i>Sierra Club v. Robertson</i> , 960 F.2d 83 (8th Cir. 1992)	13
<i>Sullivan v. DB Invs., Inc.</i> , No. CIV.A. 04-2819, 2006 WL 892707 (D.N.J. Apr. 6, 2006)	21
<i>Trbovich v. United Mine Workers of Am.</i> , 404 U.S. 528 (1972)	14
<i>United States v. Alcan Aluminum, Inc.</i> , 25 F.3d 1174 (3d Cir. 1994)	13, 21
<i>United States v. City of Los Angeles</i> , 288 F.3d 391 (9th Cir. 2002).....	12
<i>WJA Realty, Ltd. P'ship v. Nelson</i> , 708 F. Supp. 1268 (S.D. Fla. 1989).....	27

STATUTES AND RULES

Fed. R. Civ. P. 23.....	13
Fed. R. Civ. P. 24.....	12, 13, 14, 25
Fed. R. Civ. P. 24(a)	13
Fed. R. Civ. P. 24(a)(2).....	15
Fed. R. Civ. P. 24(b)	23
Fed. R. Civ. P. 24(b)(3)	23
Fed. R. Civ. P. 24(c)	25, 27

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Barry D. Jordan, <i>The Clinical Spectrum of Sport-Related Traumatic Brain Injury</i> , 9 Nature Reviews Neurology 222 (2013).....	9, 16
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Eddie Matz, <i>Stick Route</i> , ESPN The Magazine (Nov. 28, 2011)	20
Erin D. Bigler, <i>Neuropsychology and Clinical Neuroscience of Persistent Post-Concussive Syndrome</i> , 14 J. Int'l Neuropsychological Soc'y 1 (2008).....	7, 8, 9, 19
Frontline, transcript of <i>League of Denial: The NFL's Concussion Crisis</i>	16
James F. Burke <i>et al.</i> , <i>Traumatic Brain Injury May Be an Independent Risk Factor for Stroke</i> , Neurology (June 26, 2013)	20
Mark Hollmer, <i>Alzheimer's Diagnosis May Gain from PET Imaging of Tau Proteins</i> , FierceDiagnostics (Sept. 20, 2013).....	17
M. Maruyama <i>et al.</i> , <i>Imaging of Tau Pathology in a Tauopathy Mouse Model and in Alzheimer Patients Compared to Normal Controls</i> , 79 Neuron 1094 (2013)	17
Nathaniel Penn, <i>The Violent Life and Sudden Death of Junior Seau</i> , GQ (Sept. 2003).....	10
Neal Emery, <i>How to Diagnose a Battered Brain Before It's Too Late</i> , The Atlantic (May 8, 2012)	9, 17
Paul Solotaroff, <i>Dave Duerson: The Ferocious Life and Tragic Death of a Super Bowl Star</i> , Men's Journal (May 2011).....	10
Roche, FDA-Mandated Warning Label for Toradol	8, 19
Sally Jenkins & Rick Maese, <i>Pain and Pain Management in NFL Spawn a Culture of Prescription Drug Use and Abuse</i> , The Washington Post (Apr. 13, 2013).....	8
Steve Fainaru & Mark Fainaru-Wada, <i>Lawyers Fight Over Settlement Details</i> , ESPN.com (Jan. 24, 2014, 8:18 PM).....	25
Steven T. DeKosky <i>et al.</i> , <i>Traumatic Brain Injury – Football, Warfare, and Long-Term Effects</i> , The New England Journal of Medicine 1293 (2010)	17
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W. Zhang, <i>A Highly Selective and Specific PET Tracer for Imaging of Tau Pathologies</i> , 31 J. Alzheimers Disease 601 (2012)	17

INTRODUCTION

This Court has rejected a settlement proposal by the Representative Plaintiffs and their counsel, noting that the Monetary Award Fund may not “have the funds available over its lifespan to pay all claimants.” Dkt. No. 5657 at 11. However, equally troubling is the fact that the settlement provided no monetary recovery – nothing at all – for class members suffering from many of the residual effects most commonly linked to recurrent and repetitive mild traumatic brain injury (“MTBI”), while releasing every claim these class members may have against the NFL.

The Representative Plaintiffs negotiated a deal that compensated the subset of class members diagnosed with ALS, Alzheimer’s Disease, Parkinson’s Disease, some types of dementia, and in certain circumstances chronic traumatic encephalopathy (“CTE”) while funds last. But that deal did not provide a single dollar, nor adequate medical treatment, to the many more class members who suffer from afflictions that inhibit their ability to work or function fully in their daily lives. Symptoms may include memory loss, headaches, chronic pain, depression, impulsivity, diminished executive function, speech impairment, concentration and attention deficits – all conditions that have been associated with CTE. The Representative Plaintiffs, moreover, were willing to arbitrarily limit recovery for CTE. To date, essentially every brain of a deceased NFL retiree examined for CTE has shown signs of the disease. The proposed settlement, however, compensated *only* CTE in players who would die before preliminary approval of the settlement, giving nothing to retired players currently suffering from conditions that may progress to CTE.

Intervenors Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick “Rock” Cartwright, Jeff Rohrer, and Sean Considine (the “Intervenors”) are among the ranks of injured class members who suffer from a range of those afflictions, conditions that developed as a result

of MTBI sustained throughout their NFL careers. While they are members of the putative class, none of the Intervenors would have qualified for medical treatment or intervention, or compensation under the Representative Plaintiffs' deal. Intervenors' interests have gone without adequate representation, a fact evidenced by a settlement proposal that would have "fully, finally and forever . . . settle[d] and release[d] all Claims" that Intervenors have against the NFL without securing anything approaching fair compensation in return. Dkt. No. 5634 Ex. B § 18.2 ("Settlement").

Indeed, the Intervenors' interests are not protected by either Representative Plaintiff. Unlike Intervenors, Kevin Turner has been diagnosed with ALS – a disease diagnosed in none of the Intervenors – and the settlement he proposed would have allowed him to receive up to \$5 million. And Shawn Wooden has not alleged that he suffers from the range of afflictions that currently affects the Intervenors. He thus has no interest in securing compensation for those injuries and cannot adequately represent the interests of retired players who do. Nor has Mr. Wooden alleged an increased risk of developing CTE. He likewise cannot adequately represent the interests of players who currently display the symptoms of CTE and whose condition may ultimately progress to a diagnosis of CTE.

This Court should not allow the interests of Intervenors and other class members similarly situated to go unrepresented any longer. Intervenors seek to intervene to fulfill that role.

BACKGROUND

I. Background of Proposed Intervenors

Sean Morey played nine seasons with the New England Patriots, Philadelphia Eagles, Pittsburgh Steelers, Arizona Cardinals, and Barcelona Dragons, an NFL Europe team. An Ivy League stand-out at Brown University, Mr. Morey set multiple collegiate records and graduated

with academic honors. In 1999, the New England Patriots selected him as a seventh round draft pick. In 2003, Mr. Morey won the Special Teams MVP award while playing with the Philadelphia Eagles. In 2004, Mr. Morey moved to the Pittsburgh Steelers, where he was captain of the special teams and earned a Super Bowl ring. He eventually moved to the Arizona Cardinals and was named to the 2008 Pro Bowl. Mr. Morey retired just before the 2010 season. While an active player, Mr. Morey co-chaired the NFLPA Mackey White Traumatic Brain Injury Committee and served as a representative in collective bargaining negotiations with the NFL. He was recently appointed head coach of the sprint football team at Princeton University.

Alan Faneca played 13 seasons in the NFL as an offensive lineman. A star at Louisiana State University, Mr. Faneca received consensus All-American honors as a junior and was named a finalist for the prestigious Outland Trophy, which recognizes the best interior lineman in college football. Selected by the Pittsburgh Steelers in the first round of the 1998 NFL draft, Mr. Faneca was named the team's rookie of the year. A fixture on the Steelers' offensive line for ten seasons, Mr. Faneca earned a Super Bowl ring in 2006. In 2007, Steeler fans elected him to the Steelers' 75th Anniversary All Time Team. Mr. Faneca left the Steelers in 2008 for two seasons with the New York Jets and joined the Arizona Cardinals for his final season in 2010. He was named to the Pro Bowl every year from 2001 through 2009. Since retiring from professional football, Mr. Faneca has been a tireless advocate for epilepsy research.

Ben Hamilton played ten seasons in the NFL as an offensive lineman for the Denver Broncos from 2001 until 2009, and for the Seattle Seahawks in 2010. He was a fourth-round draft pick out of the University of Minnesota. He is currently a high school math teacher at a private Christian high school in Colorado.

Robert Royal played nine seasons in the NFL from 2002 until 2010 with the Washington Redskins, Buffalo Bills, and Cleveland Browns. An All-SEC tight end at Louisiana State University, Mr. Royal averaged nearly ten yards per reception over the course of his NFL career. Mr. Royal now serves as CEO of the Robert Royal Foundation, an organization he founded to promote childhood health, fitness, and education and to combat youth violence. Mr. Royal is also involved in several private equity ventures.

Roderick “Rock” Cartwright played ten seasons in the NFL after a stellar collegiate career at Kansas State University. A fullback and kick return specialist, Mr. Cartwright played with the Washington Redskins from 2002 until 2009 and the Oakland Raiders from 2010 until 2011. In 2006, Mr. Cartwright amassed 1,541 kick-off return yards, setting a Redskins record. Since retiring from the NFL, Mr. Cartwright has actively involved himself in charity work, volunteering at a summer sports camp hosted by the Robert Royal Foundation, among others. Mr. Cartwright is also a manager with Cartwright Energy Partners LLC, an oil production development firm.

Jeff Rohrer, a second-round draft pick out of Yale University, played seven seasons in the NFL with the Dallas Cowboys from 1982 until 1989. An outside linebacker, Mr. Rohrer received All-Ivy League honors and was the Cowboys’ second- and third-leading tackler in 1986 and 1987, respectively. Since retiring from the NFL, Mr. Rohrer has worked in the film industry. He is currently a partner and executive producer at Recommended, a Los Angeles-based production company.

Sean Considine played eight seasons in the NFL as a strong safety and on special teams from 2005 until 2012. After attending the University of Iowa, Mr. Considine was drafted by the Philadelphia Eagles and played four seasons with them and then two seasons with the

Jacksonville Jaguars. In 2011, he signed with the Carolina Panthers, finishing that season with the Arizona Cardinals. Mr. Considine joined the Baltimore Ravens in 2012, earning a Super Bowl ring. Since retiring from professional football, Mr. Considine has been active with numerous charities in his hometown and recently became a small business owner.

Since leaving the NFL, Intervenors each have experienced one or more of a wide range of symptoms linked to repetitive mild traumatic brain injury (“MTBI”), including a sensitivity to noise, visuospatial issues, visual impairment, chronic pain, executive function deficit, episodic depression, mood and personality changes, chronic headaches, dysnomia, a decreased ability to multi-task, peripheral nerve dysfunction (numbness, burning, and/or tingling), cervical spinal disorders, sleep dysfunction, attention and concentration deficits, short- and long-term memory deficits, and somatic disorders. Additionally, under certain circumstances some of the Intervenors also have experienced a decreased ability to interpret, regulate, express, or control complex emotions. These precise conditions have been associated with CTE and may broaden or intensify.

Although the Intervenors’ claims for their injuries would be released by the settlement that was proposed and advocated by Representative Plaintiffs and their counsel, none would qualify for any relief under the settlement beyond participation in the Baseline Assessment Program (BAP). And the BAP – which measures cognitive deficits such as memory impairment and loss of attention – did not even screen for many of these neurobehavioral conditions or neuropsychiatric presentations.

II. The Class Action Complaint

The Class Action Complaint (“Complaint”), attached to the accompanying Motion as Exhibit A, defines a class consisting of all living NFL players who have retired from the NFL before preliminary approval of the proposed settlement agreement as well as the legal

representatives of such players who have died or become legally incapacitated. Compl. ¶¶ 1, 16. The class also includes spouses, parents, dependent children, and any other person who under state law may sue the NFL by virtue of his or her relationship with the retired player. *Id.* The Complaint further divides the class into two sub-classes. Subclass 1 consists of all retired players (and their representative and derivative claimants) who “were not diagnosed with dementia, Alzheimer’s Disease, Parkinson’s Disease, ALS and/or Death with CTE prior to the date of the Preliminary Approval and Class Certification Order.” *Id.* ¶ 17(a). Subclass 2 consists of all retired players (and their representative and derivative claimants) who “were diagnosed with dementia, Alzheimer’s Disease, Parkinson’s Disease, ALS and/or Death with CTE prior to the date of the Preliminary Approval and Class Certification Order.” *Id.* ¶ 17(b). Subclass 2 also includes the representative and derivative claimants of retired players who died before preliminary approval of the settlement and who received a post-mortem diagnosis of Death with CTE. *Id.*

The Complaint names Shawn Wooden and Kevin Turner as the Representative Plaintiffs for the class. Mr. Wooden represents Subclass 1. Compl. ¶ 17(a). A safety, Mr. Wooden played in the NFL from 1996 until 2004 with the Miami Dolphins and the Chicago Bears. *Id.* ¶ 4. He is alleged to have “experienced” unspecified “neurological symptoms” but “has not been diagnosed with any neurocognitive impairment.” *Id.* The Complaint states that Mr. Wooden has an “increased risk of developing dementia, Alzheimer’s, Parkinson’s, or ALS.” *Id.* ***Mr. Wooden does not plead an increased risk of developing CTE.*** *Id.* Mr. Turner represents Subclass 2. *Id.* ¶ 17(b). A running back, Mr. Turner played in the NFL from 1992 until 1999 with the New England Patriots and the Philadelphia Eagles. *Id.* ¶ 7. He was diagnosed with ALS in 2010. *Id.*

The Complaint alleges that the NFL voluntarily undertook a duty to inform its players of the risks resulting from repeated concussive and sub-concussive head impacts and to provide its players with advice concerning the treatment and prevention of head injuries. Compl. ¶¶ 128-199. It alleges that the NFL not only performed this task negligently, but also purposefully spread misinformation to conceal from its players the risks of repetitive head trauma. *Id.* Not only did the NFL's concealment delay players from seeking and receiving adequate medical treatment for the injuries they sustained while playing, *id.* ¶ 285, the NFL's behavior forced players to incur an increased, additional incremental risk of permanent brain damage with every mismanaged concussion.

The Complaint also pleads a causal connection between football and neurodegenerative disease. Compl. ¶¶ 54-88. It identifies several studies demonstrating that the repeated head injuries or concussions sustained during an NFL player's career cause severe neurological problems such as depression, dementia, and other neurodegenerative diseases. *Id.*¹ It alleges the NFL's knowledge of these studies and the link between MTBI and neurodegenerative disease, describing the NFL's efforts to intentionally conceal and cover up these dangers. *Id.* ¶¶ 89-199. Specifically, the Complaint alleges that in 1994 the NFL established a committee of experts to study brain injury in football (the MTBI Committee), which published reports and reached conclusions inconsistent with the weight of scientific evidence and which concealed from players the true risks of continued head trauma. *Id.*

¹ Indeed, at least one study has "confirm[ed] the presence of acute pathological changes in the brain that can occur from . . . blows to the head that are below the threshold for producing what behaviorally would be classified as a concussion." Erin D. Bigler, *Neuropsychology and Clinical Neuroscience of Persistent Post-Concussive Syndrome*, 14 J. Int'l Neuropsychological Soc'y 1, 7 (2008).

Complaints filed against the NFL in other courts have also alleged that the NFL's actions exacerbated the injuries that players sustained while playing football. For example, the complaint in *Finn v. National Football League* describes the routine pre-game mass administration of Toradol, a blood-thinning pain-killer, to players without their informed consent regarding the health risks of the drug. Complaint, *Finn v. Nat'l Football League*, No. 2:11-cv-07067-JLL-MAH, ¶¶ 135-143 (D.N.J. Dec. 8, 2011) (Dkt. 4) ("Finn Compl."). Toradol's use typically is limited to the surgical setting, and several European countries have banned it. Sally Jenkins & Rick Maese, *Pain and Pain Management in NFL Spawn a Culture of Prescription Drug Use and Abuse*, The Washington Post (Apr. 13, 2013);² see also United Nations Department of Economic and Social Affairs, *Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments* 156-57 (2005) (entry for ketorolac).³

Because Toradol has blood-thinning properties, it is contraindicated for "patients . . . at high risk of bleeding" and presents an increased risk of stroke. *Finn Compl.* ¶ 137; see also Roche, FDA-Mandated Warning Label for Toradol, at 1-2.⁴ On top of those risks, Toradol "mask[s] pain" and "prevent[s] the feeling of injury," *Finn Compl.* ¶¶ 135, 140, which makes it more likely that a player will report that he feels no or little pain from a precise trauma and then return to play. Because "a prior concussion increases the likelihood of a second concussion," Bigler, *supra*, at 8, the routine administration of Toradol compounded the risk that players would

² Available at http://www.washingtonpost.com/sports/redskins/pain-and-pain-management-in-nfl-spawn-a-culture-of-prescription-drug-use-and-abuse/2013/04/13/3b36f4de-a1e9-11e2-bd52-614156372695_story.html.

³ Available at <http://www.un.org/esa/coordination/CL12.pdf>.

⁴ Available at http://www.accessdata.fda.gov/drugsatfda_docs/label/2013/019645s019lbl.pdf.

suffer multiple instances of head trauma in a single game or practice.⁵ The Intervenors include players who have received those Toradol injections.

The Complaint specifically identifies several long-term injuries arising from MTBI, “including, *but not limited to* memory loss, dementia, Alzheimer’s Disease, Parkinson’s Disease, ALS, depression, and CTE and its related symptoms.” Compl. ¶ 127 (emphasis added). “CTE is the long-term neurological consequence of repetitive mild TBI.” Barry D. Jordan, *The Clinical Spectrum of Sport-Related Traumatic Brain Injury*, 9 Nature Reviews Neurology 222, 225 (2013). The condition results from the build-up in the brain of mis-folded tau protein. Neal Emery, *How to Diagnose a Battered Brain Before It’s Too Late*, The Atlantic (May 8, 2012);⁶ A.C. McKee *et al.*, *The Spectrum of Disease in Chronic Traumatic Encephalopathy*, Brain: A Journal of Neurology 3 (Dec. 2012). More extensive tau build-up indicates a more advanced stage of CTE. Jordan, *supra*, at 227 (Box 5).

Currently, doctors can only diagnose CTE through a post-mortem brain autopsy. Jordan, *supra*, at 226.⁷ Nevertheless, researchers have identified pre-death clinical presentations of CTE. Among others, these presentations include: aggression, agitation, impulsivity, depression, suicidality, impaired attention or concentration, memory problems, executive dysfunction, dementia, and language impairment. *Id.*; McKee, *supra*, at 10, 13-14, 16-17. While some of

⁵ A prior concussion also results in a “greater morbidity of the second concussion.” Bigler, *supra*, at 8.

⁶ Available at <http://www.theatlantic.com/health/archive/2012/05/how-to-diagnose-a-battered-brain-before-its-too-late/256877/>.

⁷ But see footnote 14, *infra*. Scientific advances may soon make CTE detectable before death.

those conditions appear more pronounced in advanced Stage III and Stage IV CTE, suicidality presents at all stages. McKee, *supra*, at 10, 13-14, 16-17.⁸

Limited studies thus far have shown CTE to be present regularly in the brains of NFL players. Of the 34 deceased NFL retirees whose brains have been tested for CTE, 33 had the disease. McKee, *supra*, at 17. Of those 33, nearly half showed signs of Stage III or Stage IV CTE – CTE’s two most severe stages. *Id.* And almost all of these players – 94% – were symptomatic during their lifetimes. *Id.* The most common symptoms were short-term memory loss, executive dysfunction, and attention and concentration problems. *Id.* As described above, Intervenors currently exhibit these conditions, which other complaints filed against the NFL have identified as injuries linked to MTBI. See *Finn Compl.* ¶ 36 (identifying “memory loss, confusion, impaired judgment, paranoia, impulse control problems, aggression, [and] depression” as afflictions resulting from football-related MTBI).

III. The Proposed Settlement

The Representative Plaintiffs filed their settlement proposal and motion for preliminary approval on January 6, 2014. See Dkt. No. 5634. Notwithstanding the breadth of afflictions linked to MTBI, that settlement compensated only a few diseases. ALS claimants were to receive a maximum award of \$5 million. Settlement Ex. 3. Retired players diagnosed with

⁸ Junior Seau and Dave Duerson – two prominent former NFL players – committed suicide by shooting themselves in the heart in order to preserve their brains for study. See Nathaniel Penn, *The Violent Life and Sudden Death of Junior Seau*, GQ (Sept. 2003), <http://www.gq.com/entertainment/sports/201309/junior-seau-nfl-death-concussions-brain-injury>; Paul Solotaroff, *Dave Duerson: The Ferocious Life and Tragic Death of a Super Bowl Star*, Men’s Journal (May 2011), <http://www.mensjournal.com/magazine/dave-duerson-the-ferocious-life-and-tragic-death-of-a-super-bowl-star-20121002>. Before committing suicide, Seau battled insomnia, headaches, dizziness, and other conditions linked to CTE. Penn, *supra*. Like Seau, Duerson also showed signs of CTE before his suicide, which manifested as “starburst headaches,” blurred vision, and short-term memory deficits. Solotaroff, *supra*.

Parkinson's Disease or Alzheimer's Disease were to receive a maximum \$3.5 million award. *Id.* And class members exhibiting Level 2 or Level 1.5 dementia were to receive at most \$3 million or \$1.5 million, respectively. *Id.* The settlement also compensated cases of CTE with a maximum \$4 million award, *but only if the retired player died before preliminary approval* of the settlement. Settlement §§ 2.1(xxx), 6.3 & Ex. 1 ¶ 5. Players suffering from CTE who died after that date were to receive nothing. Moreover, players suffering from the clinical presentations of CTE were to receive no compensation under the settlement unless they independently qualified for compensation through a diagnosis of Level 1.5 or Level 2 dementia. *Id.* § 6.3.

The settlement also articulated a schedule of offsets that could reduce a claimant's award. For example, class members who played fewer seasons in the NFL or who were older at the time of the qualifying diagnosis were to receive only a percentage of the maximum award for their condition. *See* Settlement Ex. 5. Additionally, any player who suffered a *single* stroke or a *single* instance of traumatic brain injury after his playing career ended was to receive a 75% offset – that is, such a player would recover only 25% of what he was otherwise entitled to receive under the settlement. Settlement § 6.5(b)(ii)-(iii).

The settlement also would have barred any and all MTBI-related claims of every retired NFL player who did not opt out of the settlement. Class members would:

waive and release . . . any and all past, present and future claims, counterclaims, actions, rights or causes of action . . . in law or in equity . . . known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated [that any settling plaintiff] had, has, or may have in the future arising out of, in any way relating to or in connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits . . .

Settlement § 18.1(a). That release required class members to acknowledge that they “explicitly took unknown or unsuspected claims into account in entering into the Settlement Agreement and it is the intention of the Parties fully, finally and forever to settle and release all Claims” falling within the scope of the allegations in the Complaint and related lawsuits. *Id.* § 18.2. This includes not only claims against the NFL but also, with no explanation, claims of players who accept a monetary award under the proposed settlement that are (or could be) brought against the National Collegiate Athletic Association (“NCAA”). *Id.* § 18.5. The NCAA was not named as a defendant in any of the underlying lawsuits filed in this MDL proceeding.⁹

On January 14, 2014, this Court denied Co-Lead Class Counsel’s motion for preliminary approval of the settlement, declining to find that the settlement “has no obvious deficiencies, grants no preferential treatment to segments of the class, and falls within the range of possible approval.” Dkt. No. 5657 at 10 (quotation marks omitted). Instead, the Court recognized that the “Monetary Award Fund may lack the necessary funds to pay Monetary Awards for Qualifying Diagnoses” and “order[ed] the parties to share the [actuarial and economic] documentation” relied upon during settlement “with the Court through the Special Master.” *Id.* at 10, 12.

ARGUMENT

When parties propose a class-wide settlement before class certification, a putative class member seeking to ensure adequate representation of its interests may move to intervene. Fed. R. Civ. P. 24. Generally, a court should interpret the requirements for establishing intervention “broadly” and in favor of its occurrence. *United States v. City of Los Angeles*, 288 F.3d 391, 397

⁹ Claims against the NCAA for injuries arising from concussions are the subject of a separate multidistrict litigation. See *In re Nat'l Coll. Athletic Ass'n Student-Athlete Concussion Injury Litig.*, MDL No. 2492, 1:13-cv-09116 (N.D. Ill.).

(9th Cir. 2002) (quotation marks omitted); *see also United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1180 (3d Cir. 1994) (noting 1966 amendments to Rule 24 were made to “facilitate intervention”). “Doubts regarding the propriety of permitting intervention should be resolved in favor of allowing it, because this serves the judicial system’s interest in resolving all related controversies in a single action.” *Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992); *see also Kozak v. Wells*, 278 F.2d 104, 112 (8th Cir. 1960); *Koprowski v. Wistar Inst. of Anatomy & Biology*, No. CIV. A. 92-CV-1182, 1993 WL 332061, at *2 (E.D. Pa. Aug. 19, 1993). All of these purposes are well-served by allowing intervention here.

I. This Court Should Grant Intervenors’ Motion Under Rule 24(a) To Ensure Adequate Protection of Their Interests and Those of Similarly Situated Putative Class Members

Under Rule 24(a), intervention as of right is permitted where (1) the proposed intervenor is not adequately represented by an existing party in the litigation; (2) he has a sufficient interest in the litigation; (3) that interest may be affected or impaired by the disposition of the action; and (4) his application is timely. Fed. R. Civ. P. 24(a); *Alcan Aluminum*, 25 F.3d at 1181-83; *see also Brody v. Spang*, 957 F.2d 1108, 1115 (3d Cir. 1992). “In the class action context, the second and third prongs” – that the intervenor have a sufficient interest in the litigation that is affected or impaired by the disposition of the case – “are satisfied by the very nature of Rule 23 representative litigation.” *In re Cmtys. Bank of N. Va.*, 418 F.3d 277, 314 (3d Cir. 2005); *see also Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 474936, at *3 n.1 (N.D. Cal. Jan. 17, 2007) (quoting *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1405 n.1 (9th Cir.

1989)).¹⁰ Thus, intervention is proper if the existing parties to the litigation do not adequately represent the Intervenors' interests and if Intervenors' application is timely.

Under this standard, Intervenors have the right to intervene on behalf of players suffering from MTBI-related conditions, including symptoms of CTE, who would have received no monetary compensation under the proposed settlement. No existing party to the litigation adequately represents their interests and, in fact, those interests have been compromised. Because the settlement would have compensated only a small subset of MTBI-related conditions to the exclusion of the others, there is a conflict of interest between the class representatives and many class members. Intervenors' application is also timely, coming even before the settling parties have resubmitted the settlement for preliminary approval and just four months after the settling parties publicly revealed the details of the settlement.

A. Intervenors' Interests – and Those of Players Like Them – Are Not Currently Represented Before the Court

On a motion to intervene under Rule 24, the burden of showing inadequate representation "should be treated as minimal." *In re Safeguard Scientifics*, 220 F.R.D. 43, 48 (E.D. Pa. 2004) (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). The "linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class." *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 183 (3d Cir. 2012); see also *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.*, 55 F.3d 768, 800 (3d Cir. 1995) ("GM Trucks").

¹⁰ Intervenors' interests in this putative class action are no exception. The parties in this case have reached a settlement that would globally dispose of all class members' MTBI-related claims against the NFL but would leave players like Intervenors uncompensated for their injuries. They thus have a clear interest that would be substantially impaired if the settlement – as it now stands – is eventually approved.

Intervenors' interests do not align with those of the Representative Plaintiffs for at least two reasons, either of which justifies intervention. First, Intervenors' MTBI-related afflictions – afflictions from which the Representative Plaintiffs do not claim to suffer and for which they have not sought relief – would have received no monetary compensation under the settlement. Second, the settlement would have imposed a stark 75% offset for instances of stroke – a medical condition that Intervenors are at increased risk of suffering as a result of the NFL's own conduct in administering Toradol to players. Thus, Intervenors have more than satisfied their burden of showing that their interests are not adequately represented. *See Fed. R. Civ. P.* 24(a)(2); *id.* (Advisory Committee Note to 1966 Amendment); *see also Cnty. Bank*, 418 F.3d at 314-15; *Diaz*, 876 F.2d at 1405 n.1; *Glass*, 2007 WL 474936, at *3 n.1.

- 1. Representative Plaintiffs Negotiated and Advocated a Settlement That Addressed Their Own Injuries but Failed To Address the Injuries of Intervenors and Other Class Members**

The settlement would have compensated only a small subset of MTBI-related injuries to the exclusion of all others, creating conflict between the interests of those who suffer from compensated injuries and those whose injuries go without relief. *See Dewey*, 681 F.3d at 183. As a result of their NFL careers, the Intervenors suffer from a range of significant medical conditions: visuospatial difficulties, executive function deficit, chronic headaches, dysnomia, decreased emotional stability, increased impulsivity, and attention and concentration deficits. None of these conditions would receive compensation or medical treatment under the settlement. The failure to compensate or treat these afflictions is made more notable by Co-Lead Class Counsels' own recognition of the links between MTBI and these uncompensated conditions. *See, e.g.*, Compl. ¶ 127 (noting "MTBI can and does lead to long-term brain injury, *including, but not limited to, memory loss*, dementia, Alzheimer's Disease, Parkinson's Disease, ALS,

depression, and CTE and *its related symptoms.*” (emphasis added)); *Finn Compl.* ¶¶ 36, 100-145.¹¹

The disparate – and arbitrary – treatment of class members suffering from these uncompensated afflictions is particularly stark in light of the settlement’s framework for compensating CTE. The uncompensated conditions afflicting Intervenors are among the well-documented symptoms of CTE. McKee, *supra*, at 18; Jordan, *supra*, at 226-27. And while CTE found in a retired player who died on the eve of preliminary approval would have been the basis for a \$4 million payment, that same condition would have gone uncompensated if the player died one day later, after preliminary approval. That is because the settlement defined “qualifying diagnosis” to include “a post-mortem diagnosis . . . of CTE” *only* “[f]or Retired NFL Football Players who died prior to the date of the Preliminary Approval and Class Certification Order.” Settlement Ex. 1 ¶ 5; *see also* Settlement ¶¶ 2.1(xxx), 6.2(a). Thus, former players like the Intervenors who are currently managing the cumulative effects of MTBI – many of which are consistent with the presentation of CTE – would have received no compensation and would continue bearing their medical costs even if their condition progressed to full-blown CTE.

That limitation on CTE compensation is remarkable: Given that 33 of the 34 deceased NFL players whose brains have been examined for CTE have been diagnosed with the condition, one of the lead CTE researchers has wondered whether “every single football player doesn’t have” CTE.¹² Yet notwithstanding the widespread prevalence of CTE among NFL retirees, the settlement provided *no compensation* to players with CTE who die after preliminary approval of

¹¹ Co-Lead Class Counsel is one of the attorneys representing the plaintiffs in *Finn*.

¹² Frontline, transcript of *League of Denial: The NFL’s Concussion Crisis*, <http://www.pbs.org/wgbh/pages/frontline/sports/league-of-denial/transcript-50/>.

the settlement – likely a large percentage of the 20,000-member putative class.¹³ Co-Lead Class Counsel have never explained or justified the basis for such a stark difference in treatment among players suffering from the exact same MTBI-related condition.

The consequences of denying compensation to class members like the Intervenors will multiply over time. Many diseases linked to MTBI exhibit variable latency periods, meaning that the symptoms of MTBI-related afflictions will present earlier in retirement for some former NFL players than for others. Steven T. DeKosky *et al.*, *Traumatic Brain Injury – Football, Warfare, and Long-Term Effects*, The New England Journal of Medicine 1293, 1293-94 (2010). As science advances, moreover, it is likely that MTBI will be shown to correlate with additional diseases, and that CTE will be detectable before death.¹⁴ Yet the settlement provided no flexibility for adding to the list of qualifying diseases or compensating new conditions. See

¹³ In theory, a retired player suffering from CTE could receive compensation through an independent qualifying diagnosis of, for example, Level 1.5 dementia. But dementia does not always accompany the injuries that Intervenors have suffered and not all stages of CTE exhibit dementia. In one study, for example, no individual presenting with Stage I or II CTE showed signs of dementia despite showing symptoms similar to those that Intervenors are experiencing. McKee, *supra*, at 10, 13. Even some players with advanced stages of CTE *still* were not considered cognitively impaired. *Id.* at 14 (noting 25% of the individuals diagnosed with stage III CTE were not considered cognitively impaired). Indeed, it seems apparent from what is known about the behavior and symptoms of some deceased football players found to have CTE, such as Junior Seau and Dave Duerson, that at least some (and perhaps many) of those deceased players would not have qualified for compensation at all had they not died before preliminary approval of the settlement.

¹⁴ The likelihood that scientific advancements will soon allow for testing of tau protein build-up in a living brain – and therefore allow detection of CTE before the retired player dies – is high. See Emery, *supra* (noting “pilot studies show promise for [using] diagnostic MRI and MRS scans [to diagnose CTE] as brain imaging technology improves”). Indeed, several researchers have already identified chemicals that bind tau protein in living brain tissue. M. Maruyama *et al.*, *Imaging of Tau Pathology in a Tauopathy Mouse Model and in Alzheimer Patients Compared to Normal Controls*, 79 Neuron 1094 (2013); W. Zhang, *A Highly Selective and Specific PET Tracer for Imaging of Tau Pathologies*, 31 J. Alzheimers Disease 601 (2012); see also Mark Hollmer, *Alzheimer’s Diagnosis May Gain from PET Imaging of Tau Proteins*, FierceDiagnostics (Sept. 20, 2013), <http://www.fiercediagnostics.com/story/alzheimers-diagnosis-may-gain-pet-imaging-tau-proteins/2013-09-20>.

Settlement § 6.4(a) (“In no event will modifications be made to the Monetary Award levels in the Monetary Award Grid, except for inflation adjustment(s).”). Class members in Intervenors’ shoes thus have a strong need for representatives who will press for settlement “provisions that can keep pace with changing science and medicine, rather than freezing in place the science” known at the time of settlement. *Dewey*, 681 F.3d at 182 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 610-11 (1997)).

The Representative Plaintiffs cannot fulfill that role. Neither of the Representative Plaintiffs shares the Intervenors’ interests in securing compensation for other MTBI-related conditions and for *all cases* of CTE. Mr. Turner, who suffers from ALS, has a diagnosed medical condition the parties specifically intend to compensate under the settlement (and rightly so). Compl. ¶ 7. But he is not poised to represent the interests of those who have suffered different injuries and would have received nothing under the proposed settlement. Neither is Mr. Wooden. Intervenors presently exhibit MTBI-related injuries that are clinical indications of CTE. Mr. Wooden, by contrast, has not alleged that he suffers from any MTBI-related affliction. Nor has he alleged that he is at “[an] increased risk of developing” CTE, even though he does assert such a risk for dementia, Alzheimer’s Disease, Parkinson’s Disease, and ALS. Compl. ¶ 4. Mr. Wooden’s interests therefore lie in securing future compensation for those four afflictions, not in securing payment for the conditions experienced by the Intervenors.¹⁵

¹⁵ Even if Mr. Wooden were to now report that he, too, suffers from the conditions affecting Intervenors or that he fears the onset of CTE, he cannot reliably represent those interests going forward: He has abdicated any responsibility to those interests by advocating a proposed settlement that ignores those injuries.

2. The 75% Offset for Stroke and Traumatic Brain Injury Also Demonstrates Conflict Between the Intervenors' Interests and Those of the Representative Plaintiffs

The proposed settlement also would have provided for offsets that create conflict between Intervenors' interests and those of the Representative Plaintiffs. *See Dewey*, 681 F.3d at 183. The proposed settlement imposed a *75% offset* for a *single instance* of non-football-related traumatic brain injury ("TBI") or stroke occurring after the player's NFL career has ended. Settlement § 6.5(b)(ii). That 75% offset applied regardless of the severity of traumatic brain injury that the player sustained while playing football. And it presumed that a single non-football-related instance of TBI accounts for 75% of a player's MTBI-related injuries, even though that player may have sustained numerous diagnosed and undiagnosed head traumas throughout his NFL career. That is both devoid of scientific justification and grossly unfair.

Instances of stroke, moreover, should be compensated injuries, not offsets that reduce recovery, *because the NFL itself has increased Intervenors' risk of stroke*. *See Finn Compl.* ¶¶ 135-143. NFL-administered Toradol injections increased that risk in two ways. First, as a pain-killer, Toradol masks injuries that players may have suffered, encouraging their continued participation in the game and increasing the risk that a player would suffer multiple instances of MTBI in one game. Second, MTBI suffered after a Toradol injection occurs at a time when the cerebrovascular architecture of the brain is particularly weak. *See Bigler, supra*, at 8 (noting that "in TBI the same mechanisms that stretch the neuron can stretch the blood vessel [which] may impair the neurogenic response of the blood vessel"). Toradol is a powerful blood-thinner that increases the risk of stroke and micro-hemorrhaging in players under Toradol's effect. *Finn Compl.* ¶¶ 135-143; *see also* FDA-Mandated Warning Label, at 1.

Large groups of players who weekly received pre-game Toradol injections thus suffered repetitive MTBI at a time when their brains were most susceptible to permanent damage and

injury. That damage itself enhances a retired player's risk of experiencing a stroke later in life.

See James F. Burke et al., Traumatic Brain Injury May Be an Independent Risk Factor for Stroke, Neurology (June 26, 2013). On top of these effects, the effects of sustained, long-term use of Toradol are completely unknown. *See Eddie Matz, Stick Route*, ESPN The Magazine (Nov. 28, 2011).¹⁶ Thus, the NFL's own negligent and fraudulent actions have contributed to the prevalence of stroke among retired players. Co-Lead Class Counsel knew of these allegations – indeed, he represents the *Finn* plaintiffs – yet the settlement makes no mention of these injuries except to release any claims for them and to inexplicably select them as bases for reducing the retired player's compensation.

As with the Intervenors' interests in securing compensation for CTE and its related symptoms, the Representative Plaintiffs do not adequately represent Intervenors' interests in eliminating or reducing the offset related to stroke and post-NFL TBI. Neither Mr. Turner nor Mr. Wooden claims an increased risk of stroke through NFL-administered Toradol use. As a result, neither can adequately represent those Intervenors who some day may suffer such a stroke – and the resulting drop in compensation under the proposed settlement – as a result of the NFL's own conduct.¹⁷

* * * * *

¹⁶ Available at http://espn.go.com/nfl/story/_/id/7243606/nfl-players-tony-romo-ronde-barber-rely-new-painkiller-toradol.

¹⁷ The proposed settlement was flawed in other ways. For example, it required claimants to register within a mere 180 days from its effective date, disallowing any claims from class members who do not so register. Settlement §§ 4.2(c), 6.2(a). And as this Court has noted, the proposed settlement's release extended to claims against the NCAA, a non-party to the suit. Dkt. No. 5657 at 10 n.6. Derivative claimants, notwithstanding the independent injuries they have suffered, were to receive a mere 1% recovery. Settlement § 7.3

The “linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class.” *Dewey*, 681 F.3d at 183. Intervenors’ interests and the Representative Plaintiffs’ interests simply do not align. *Compare Sullivan v. DB Invs., Inc.*, No. CIV.A. 04-2819, 2006 WL 892707 (D.N.J. Apr. 6, 2006) (finding representation adequate where subclasses within the settlement were vigorously and independently represented). In fact, they conflict. While the Representative Plaintiffs’ interests lie in securing present and future payment for certain MTBI-related diseases – specifically, those for which Mr. Wooden has alleged an increase risk – the Intervenors’ interests lie in securing present and future payment for *other* MTBI-related conditions. *See Amchem*, 521 U.S. at 620-21. The Court should therefore grant the Intervenors party status for the purpose of ensuring that the views of retired players suffering from these conditions – which may progress to CTE – are represented in the settlement process.

B. The Intervenors’ Request Is Timely and Will Neither Prejudice the Parties Nor Cause Undue Delay

Timeliness, in this context, is not merely a matter of counting days or months; instead, it is viewed under the totality of the circumstances. *See Alcan Aluminum*, 25 F.3d at 1182; *see also NAACP v. New York*, 413 U.S. 345, 365-66 (1973) (“[T]he point to which [a] suit has progressed is one factor in the determination of timeliness, [but] it is not solely dispositive”; rather, it “is to be determined from all the circumstances . . . by the court in the exercise of its sound discretion.”). Because only when “‘the existence and limits of the class have been established and notice of membership has been sent out does a class member have any duty to take note of the suit or to exercise any responsibility with respect to it,’” the “time frame in which a class member may file a motion to intervene challenging the adequacy of class representation must be at least as long as the time in which s/he may opt-out of the class.” *Cnty. Bank*, 418 F.3d at 314

(quoting *McKowan Lowe & Co. v. Jasmine, Ltd.*, 295 F.3d 380, 384 (3d Cir. 2002)). The Intervenors amply satisfy the timeliness requirement here. Aware of both the specific terms of the settlement agreement and their inability to recover under it, Intervenors properly move to intervene well before “the time in which [they] may opt-out of the class” – indeed, they are acting before any class has been certified. *Cnty. Bank*, 418 F.3d at 314.

The procedural posture of this case highlights the timeliness of Intervenors’ motion and the present need for their participation. Preliminary approval of a class settlement would create a presumption that the settlement is fair. *GM Trucks*, 55 F.3d at 785. Thus, preliminary approval itself impairs Intervenors’ rights. Allowing Intervenors’ participation in the case after conditional class certification, which accompanies preliminary approval, would deprive Intervenors of the right to voice their interests before the Court decides those issues. Intervention after preliminary approval would therefore come too late. As *GM Trucks* explained, “‘where notice of the class action is . . . sent simultaneously with the notice of the settlement itself, the class members are presented with what looks like a fait accompli.’” *Id.* at 789 (alterations omitted) (quoting *Mars Steel v. Cont'l Ill. Nat'l Bank & Trust*, 834 F.2d 677, 680-81 (7th Cir. 1987)).

Moreover, intervention at this time would not prejudice the parties or cause undue delay. The critical inquiry when assessing delay or prejudice is “what proceedings of substance on the merits have occurred,” such as whether there have been a large number of “depositions taken, dispositive motions filed, or decrees entered.” *Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369-70 (3d Cir. 1995). From a procedural perspective, this is a young case. There has been little motion practice, absolutely no fact or expert discovery, and nothing in the way of trial preparation. Thus, granting intervention will not reopen matters that have been fully resolved or require a reopening of discovery or an extensive re-examination of

factors already considered. Should an examination of some issues already considered be necessary, it can occur simultaneously with the study by the Special Master. If anything, Intervenors' involvement can better ensure that all segments of the proposed settlement class are heard, and that the Special Master is not provided only those materials that support the proposed settlement. *Cf. Lusardi v. Xerox Corp.*, 975 F.2d 964, 984 n.34 (3d Cir. 1992).

In sum, the Intervenors here, far from showing up late to the game, timely seek intervention to address a clear and direct risk of impairment to their – and numerous other putative class members' – rights. Furthermore, they do so without creating a risk of undue delay or prejudice to the parties, as intervention will not require re-litigating any steps already taken, whether in terms of discovery, consideration of issues presented, or court proceedings. Finally, intervention offers the added benefit of moving this litigation more swiftly towards a final resolution with less resistance from segments of the putative settlement class who feel that their interests may not be voiced during the Court's preliminary consideration of the settlement.

II. Alternatively, Permissive Intervention Should Be Granted Under Rule 24(b)

Permissive intervention requires only “a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b). Additionally, the rule requires a court to consider “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Intervenors satisfy these requirements here.

The Intervenors’ claims match those of the other plaintiffs: all seek relief for the NFL’s acts or refusals to act regarding the risks of repeated head trauma and brain injury. They share common questions of law or fact with the main action that are expressly set forth in the Complaint. In short, they are putative class members who would be bound by any settlement that may be approved.

Granting Intervenors' motion will neither prejudice the parties nor cause undue delay. In brief, their motion is timely and granting it here will not interfere with or require repeating any prior proceedings (as there have been few), will not require revisiting discovery already performed (as there has been none), and will not introduce completely new issues into the litigation.

Intervenors will provide a service to the Court and to other members of the class by providing a check against the Representative Plaintiffs and their counsel – who appear not to have pursued the interests of all class members zealously. For example, Class Counsel settled the case without any discovery, making it impossible to appreciate fully the merits – and value – of plaintiffs' claims. *See Cnty. Bank*, 418 F.3d at 307 (finding inadequate representation where, among other things, no formal discovery had occurred); *GM Trucks*, 55 F.3d at 806, 814 (finding class settlement unfair where, among other things, amount of discovery inadequate). Additionally, the procedure by which Co-Lead Class Counsel selected Sub-Class Counsel and the role Sub-Class Counsel played in the negotiations are complete unknowns. In fact, the mediator never states that he met with Sub-Class Counsel individually. *See* Dkt. No. 5634-4 Ex. D ¶¶ 5-7 (repeatedly indicating mediator met with "both sides," in reference to the plaintiffs collectively and the NFL). Nor is the extent of the Representative Plaintiffs' participation in the negotiations – and thus their ability to protect the interests of the class – known. *See Olden v. Gardner*, 294 F. App'x 210, 219 (6th Cir. 2008) (finding class settlement unfair where, among other things, the class representatives "provided no meaningful oversight of the class counsel

during the settlement negotiations"). Further, media reports suggest that Co-Lead Class Counsel has "clashed with his own clients."¹⁸

And the attorneys' fees provision raises additional red flags. First, the NFL agreed not to dispute Co-Lead Class Counsel's fee request, Settlement § 21.1, which "increases the likelihood that class counsel will have bargained away something of value to the class," *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (quotation marks omitted). Second, "fee negotiations [should] be postponed until the settlement [is] judicially approved, not merely until the date the parties allege to have reached an agreement." *GM Trucks*, 55 F.3d at 804. Notwithstanding that warning, the settling parties here negotiated attorneys' fees before even filing the proposed settlement with the Court.

It is evident that the Intervenors' interests here are not adequately represented due to the antagonism between their interests and those of the Representative Plaintiffs. Allowing intervention will ensure that Intervenors' interests are both adequately represented and protected. Accordingly, this Court should allow these retired players to permissively intervene.

III. The Intervenors Have Complied with the Procedural Requirements for Intervention

The purpose of Rule 24's procedural requirements is to "provid[e] notice to the existing parties of the basis and nature of the intervenor's claim." *Phila. Recycling & Transfer Sta., Inc.*, No. Civ. A. 95-4597, 1995 WL 517644, at *3 (E.D. Pa. Aug. 29, 1995); *see Fed. R. Civ. P.* 24(c). When an intervenor's motion and memorandum have satisfied that purpose, "[l]iberal construction of [Rule 24(c)] is especially appropriate." *Id.* The Intervenors have provided such notice in their Motion to Intervene and accompanying Memorandum. They seek intervention

¹⁸ Steve Fainaru & Mark Fainaru-Wada, *Lawyers Fight Over Settlement Details*, ESPN.com (Jan. 24, 2014, 8:18 PM), http://espn.go.com/espn/otl/story/_/id/10346091/lead-negotiator-facing-strong-opposition-concussion-settlement.

because the Representative Plaintiffs have abandoned their interests, as demonstrated by advocating approval of a settlement that would have released all claims for their MTBI-related afflictions without providing any monetary compensation or medical treatment. Thus, those afflictions either were not considered during settlement negotiations or compensation for those afflictions was bargained away. Regardless of the reason, the Intervenors' interests were not adequately represented.

While Rule 24(c) mentions proposed intervenors attaching a pleading to their motion to intervene, courts have recognized that an independent complaint is not necessary when the proposed intervenor has otherwise given notice of the grounds for intervention as the Intervenors have here. *In re Mapp*, for example, granted intervention in a class action – without a separate complaint – where the “applicants’ motion to intervene was specific enough to inform the parties of the issues at stake in their claim.” No. 85-2745, 1986 WL 8340, at *3 (E.D. Pa. July 25, 1986). *Pereira v. Foot Locker, Inc.* also allowed intervention in a class action – without a separate complaint – because the intervenors “stat[ed] the grounds for their intervention” and “stated that they wish[ed] to intervene as full party plaintiffs and participate in the litigation as such.” No. 07-cv-2157, 2009 WL 4673865, at *5 (E.D. Pa. Dec. 7, 2009). And as the Eleventh Circuit has observed, when a person seeks intervention “only to protect the minority members of the plaintiff-class” because “Lead Counsel [are] not properly representing the interests of these members,” a separate complaint is unnecessary. *Piambino v. Bailey*, 757 F.2d 1112, 1121 (11th Cir. 1985). “Everyone kn[ows] the nature of the [intervenors’] substantive claims” – they are “the very claims Lead Counsel had asserted in their complaint.” *Id.* Because the Intervenors have identified the basis of their intervention, are members of the putative class, and are seeking to intervene only to protect the unrepresented interests of certain class members, the Intervenors

have satisfied the requirements of Rule 24(c).¹⁹ Nevertheless, in an abundance of caution and in technical compliance with Rule 24(c), the Intervenors attach Plaintiffs' Class Action Complaint, which sets forth their claims.²⁰

Should the Court find deficient the Intervenors' attachment of the Class Action Complaint, they request that the Court grant their motion conditional on filing of "a supplemental pleading to be filed within a short period of time." *Phila. Recycling*, 1995 WL 517644, at *3 (citing *WJA Realty, Ltd. P'ship v. Nelson*, 708 F. Supp. 1268, 1272 (S.D. Fla. 1989)).

CONCLUSION

The Representative Plaintiffs are not adequately representing the interests of all members of the class. They have already proposed and advocated a settlement that would provide a monetary benefit to only a small group of class members who were diagnosed with one of four medical conditions, or are deceased with a diagnosis of CTE, yet require all class members to release all claims. The Court should grant Intervenors plaintiff-intervenor status in Civil Action No. 2:14-cv-00029-AB for purposes of participating in settlement negotiations on behalf of retired NFL players who, like themselves, have displayed medical conditions consistent with the

¹⁹ When courts have cited Rule 24(c) in denying a motion to intervene, they have done so when the motion itself does not identify the claims or defenses for which intervention is sought. See *Gaskin ex rel. Gaskin v. Pennsylvania*, 197 F. App'x 141, 143-44 (3d Cir. 2006); *Contawe v. Crescent Heights of Am., Inc.*, No. Civ. A. 04-2304, 2004 WL 2966931, at *8 (E.D. Pa. Dec. 21, 2004); *Lexington Ins. Co. v. Caleco, Inc.*, No. Civ. A. 01-5196, 2003 WL 21652163, at *6 (E.D. Pa. Jan. 25, 2003); see also 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1914 (3d ed. 2013) ("Wright & Miller") (noting that cases strictly applying Rule 24(c) "also ha[ve] discussed reasons of substance why intervention should not be allowed").

²⁰ In the limited context of shareholder derivative litigation, some courts have found it insufficient under Rule 24(c) to rely on the original complaint because shareholder derivative complaints must be verified. E.g., *Abramson v. Pennwood Inv. Corp.*, 392 F.2d 759, 761 (2d Cir. 1968). See generally 7C Wright & Miller § 1914 & n.11. The personal injury and medical monitoring complaint here requires no verification. In any event, requiring an independent complaint setting forth the same claims as the Class Action Complaint would only result in needless duplication and repetition.

symptoms of CTE and are at risk of developing CTE and whose interests are otherwise in conflict with those of Representative Plaintiffs, who have failed to adequately represent them.

Dated: May 5, 2014

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

PROPOSED ORDER GRANTING MOTION TO INTERVENE

AND NOW, this _____ day of _____, 2014, after
consideration of the Motion to Intervene of Sean Morey, Alan Faneca, Ben Hamilton, Robert
Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine, and any responses thereto, it is
hereby ORDERED that the Motion is GRANTED. Sean Morey, Alan Faneca, Ben Hamilton,
Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine are granted leave to
intervene.

BY THE COURT:

ANITA B. BRODY
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL
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MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO INTERVENE

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	2
I. Background of Proposed Intervenors	2
II. The Class Action Complaint.....	5
III. The Proposed Settlement	10
ARGUMENT	12
I. This Court Should Grant Intervenors' Motion Under Rule 24(a) To Ensure Adequate Protection of Their Interests and Those of Similarly Situated Putative Class Members	13
A. Intervenors' Interests – and Those of Players Like Them – Are Not Currently Represented Before the Court.....	14
1. Representative Plaintiffs Negotiated and Advocated a Settlement That Addressed Their Own Injuries but Failed To Address the Injuries of Intervenors and Other Class Members	15
2. The 75% Offset for Stroke and Traumatic Brain Injury Also Demonstrates Conflict Between the Intervenors' Interests and Those of the Representative Plaintiffs.....	19
B. The Intervenors' Request Is Timely and Will Neither Prejudice the Parties Nor Cause Undue Delay	21
II. Alternatively, Permissive Intervention Should Be Granted Under Rule 24(b)	23
III. The Intervenors Have Complied with the Procedural Requirements for Intervention	25
CONCLUSION	27

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Abramson v. Pennwood Inv. Corp.</i> , 392 F.2d 759 (2d Cir. 1968).....	27
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	18, 21
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011)	25
<i>Brody v. Spang</i> , 957 F.2d 1108 (3d Cir. 1992).....	13
<i>In re Cmtys. Bank of N. Va.</i> , 418 F.3d 277 (3d Cir. 2005)..... <i>passim</i>	
<i>Contawee v. Crescent Heights of Am., Inc.</i> , No. Civ. A. 04-2304, 2004 WL 2966931 (E.D. Pa. Dec. 21, 2004).....	27
<i>Dewey v. Volkswagen Aktiengesellschaft</i> , 681 F.3d 170 (3d Cir. 2012)	<i>passim</i>
<i>Diaz v. Trust Territory of Pac. Islands</i> , 876 F.2d 1401 (9th Cir. 1989).....	13, 15
<i>Gaskin ex rel. Gaskin v. Pennsylvania</i> , 197 F. App'x 141 (3d Cir. 2006)	27
<i>In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.</i> , 55 F.3d 768 (3d Cir. 1995).....	14, 22, 24, 25
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<i>Koprowski v. Wistar Inst. of Anatomy & Biology</i> , No. CIV. A. 92-CV-1182, 1993 WL 332061 (E.D. Pa. Aug. 19, 1993)	13
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<i>Lexington Ins. Co. v. Caleco, Inc.</i> , No. Civ. A. 01-5196, 2003 WL 21652163 (E.D. Pa. Jan. 25, 2003)	27
<i>Lusardi v. Xerox Corp.</i> , 975 F.2d 964 (3d Cir. 1992)	23
<i>In re Mapp</i> , No. 85-2745, 1986 WL 8340 (E.D. Pa. July 25, 1986)	26
<i>Mars Steel v. Cont'l Ill. Nat'l Bank & Trust</i> , 834 F.2d 677 (7th Cir. 1987)	22
<i>McKowan Lowe & Co. v. Jasmine, Ltd.</i> , 295 F.3d 380 (3d Cir. 2002)	22
<i>Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.</i> , 72 F.3d 361 (3d Cir. 1995).....	22

<i>NAACP v. New York</i> , 413 U.S. 345 (1973)	21
<i>Olden v. Gardner</i> , 294 F. App'x 210 (6th Cir. 2008).....	24
<i>Pereira v. Foot Locker, Inc.</i> , No. 07-cv-2157, 2009 WL 4673865 (E.D. Pa. Dec. 7, 2009).....	26
<i>Phila. Recycling & Transfer Sta., Inc.</i> , No. Civ. A. 95-4597, 1995 WL 517644 (E.D. Pa. Aug. 29, 1995)	25, 27
<i>Piambino v. Bailey</i> , 757 F.2d 1112 (11th Cir. 1985).....	26
<i>In re Safeguard Scientifics</i> , 220 F.R.D. 43 (E.D. Pa. 2004)	14
<i>Sierra Club v. Robertson</i> , 960 F.2d 83 (8th Cir. 1992)	13
<i>Sullivan v. DB Invs., Inc.</i> , No. CIV.A. 04-2819, 2006 WL 892707 (D.N.J. Apr. 6, 2006)	21
<i>Trbovich v. United Mine Workers of Am.</i> , 404 U.S. 528 (1972)	14
<i>United States v. Alcan Aluminum, Inc.</i> , 25 F.3d 1174 (3d Cir. 1994)	13, 21
<i>United States v. City of Los Angeles</i> , 288 F.3d 391 (9th Cir. 2002).....	12
<i>WJA Realty, Ltd. P'ship v. Nelson</i> , 708 F. Supp. 1268 (S.D. Fla. 1989).....	27

STATUTES AND RULES

Fed. R. Civ. P. 23.....	13
Fed. R. Civ. P. 24.....	12, 13, 14, 25
Fed. R. Civ. P. 24(a)	13
Fed. R. Civ. P. 24(a)(2).....	15
Fed. R. Civ. P. 24(b)	23
Fed. R. Civ. P. 24(b)(3)	23
Fed. R. Civ. P. 24(c)	25, 27

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A.C. McKee <i>et al.</i> , <i>The Spectrum of Disease in Chronic Traumatic Encephalopathy</i> , Brain: A Journal of Neurology 3 (Dec. 2012)	9, 10, 16, 17
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Barry D. Jordan, <i>The Clinical Spectrum of Sport-Related Traumatic Brain Injury</i> , 9 Nature Reviews Neurology 222 (2013).....	9, 16
Charles Alan Wright & Arthur R. Miller, <i>Federal Practice and Procedure</i> (3d ed. 2013).....	27
Eddie Matz, <i>Stick Route</i> , ESPN The Magazine (Nov. 28, 2011)	20
Erin D. Bigler, <i>Neuropsychology and Clinical Neuroscience of Persistent Post-Concussive Syndrome</i> , 14 J. Int'l Neuropsychological Soc'y 1 (2008).....	7, 8, 9, 19
Frontline, transcript of <i>League of Denial: The NFL's Concussion Crisis</i>	16
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Mark Hollmer, <i>Alzheimer's Diagnosis May Gain from PET Imaging of Tau Proteins</i> , FierceDiagnostics (Sept. 20, 2013).....	17
M. Maruyama <i>et al.</i> , <i>Imaging of Tau Pathology in a Tauopathy Mouse Model and in Alzheimer Patients Compared to Normal Controls</i> , 79 Neuron 1094 (2013)	17
Nathaniel Penn, <i>The Violent Life and Sudden Death of Junior Seau</i> , GQ (Sept. 2003).....	10
Neal Emery, <i>How to Diagnose a Battered Brain Before It's Too Late</i> , The Atlantic (May 8, 2012)	9, 17
Paul Solotaroff, <i>Dave Duerson: The Ferocious Life and Tragic Death of a Super Bowl Star</i> , Men's Journal (May 2011).....	10
Roche, FDA-Mandated Warning Label for Toradol	8, 19
Sally Jenkins & Rick Maese, <i>Pain and Pain Management in NFL Spawn a Culture of Prescription Drug Use and Abuse</i> , The Washington Post (Apr. 13, 2013).....	8
Steve Fainaru & Mark Fainaru-Wada, <i>Lawyers Fight Over Settlement Details</i> , ESPN.com (Jan. 24, 2014, 8:18 PM).....	25
Steven T. DeKosky <i>et al.</i> , <i>Traumatic Brain Injury – Football, Warfare, and Long-Term Effects</i> , The New England Journal of Medicine 1293 (2010)	17
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W. Zhang, <i>A Highly Selective and Specific PET Tracer for Imaging of Tau Pathologies</i> , 31 J. Alzheimers Disease 601 (2012)	17

INTRODUCTION

This Court has rejected a settlement proposal by the Representative Plaintiffs and their counsel, noting that the Monetary Award Fund may not “have the funds available over its lifespan to pay all claimants.” Dkt. No. 5657 at 11. However, equally troubling is the fact that the settlement provided no monetary recovery – nothing at all – for class members suffering from many of the residual effects most commonly linked to recurrent and repetitive mild traumatic brain injury (“MTBI”), while releasing every claim these class members may have against the NFL.

The Representative Plaintiffs negotiated a deal that compensated the subset of class members diagnosed with ALS, Alzheimer’s Disease, Parkinson’s Disease, some types of dementia, and in certain circumstances chronic traumatic encephalopathy (“CTE”) while funds last. But that deal did not provide a single dollar, nor adequate medical treatment, to the many more class members who suffer from afflictions that inhibit their ability to work or function fully in their daily lives. Symptoms may include memory loss, headaches, chronic pain, depression, impulsivity, diminished executive function, speech impairment, concentration and attention deficits – all conditions that have been associated with CTE. The Representative Plaintiffs, moreover, were willing to arbitrarily limit recovery for CTE. To date, essentially every brain of a deceased NFL retiree examined for CTE has shown signs of the disease. The proposed settlement, however, compensated *only* CTE in players who would die before preliminary approval of the settlement, giving nothing to retired players currently suffering from conditions that may progress to CTE.

Intervenors Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick “Rock” Cartwright, Jeff Rohrer, and Sean Considine (the “Intervenors”) are among the ranks of injured class members who suffer from a range of those afflictions, conditions that developed as a result

of MTBI sustained throughout their NFL careers. While they are members of the putative class, none of the Intervenors would have qualified for medical treatment or intervention, or compensation under the Representative Plaintiffs' deal. Intervenors' interests have gone without adequate representation, a fact evidenced by a settlement proposal that would have "fully, finally and forever . . . settle[d] and release[d] all Claims" that Intervenors have against the NFL without securing anything approaching fair compensation in return. Dkt. No. 5634 Ex. B § 18.2 ("Settlement").

Indeed, the Intervenors' interests are not protected by either Representative Plaintiff. Unlike Intervenors, Kevin Turner has been diagnosed with ALS – a disease diagnosed in none of the Intervenors – and the settlement he proposed would have allowed him to receive up to \$5 million. And Shawn Wooden has not alleged that he suffers from the range of afflictions that currently affects the Intervenors. He thus has no interest in securing compensation for those injuries and cannot adequately represent the interests of retired players who do. Nor has Mr. Wooden alleged an increased risk of developing CTE. He likewise cannot adequately represent the interests of players who currently display the symptoms of CTE and whose condition may ultimately progress to a diagnosis of CTE.

This Court should not allow the interests of Intervenors and other class members similarly situated to go unrepresented any longer. Intervenors seek to intervene to fulfill that role.

BACKGROUND

I. Background of Proposed Intervenors

Sean Morey played nine seasons with the New England Patriots, Philadelphia Eagles, Pittsburgh Steelers, Arizona Cardinals, and Barcelona Dragons, an NFL Europe team. An Ivy League stand-out at Brown University, Mr. Morey set multiple collegiate records and graduated

with academic honors. In 1999, the New England Patriots selected him as a seventh round draft pick. In 2003, Mr. Morey won the Special Teams MVP award while playing with the Philadelphia Eagles. In 2004, Mr. Morey moved to the Pittsburgh Steelers, where he was captain of the special teams and earned a Super Bowl ring. He eventually moved to the Arizona Cardinals and was named to the 2008 Pro Bowl. Mr. Morey retired just before the 2010 season. While an active player, Mr. Morey co-chaired the NFLPA Mackey White Traumatic Brain Injury Committee and served as a representative in collective bargaining negotiations with the NFL. He was recently appointed head coach of the sprint football team at Princeton University.

Alan Faneca played 13 seasons in the NFL as an offensive lineman. A star at Louisiana State University, Mr. Faneca received consensus All-American honors as a junior and was named a finalist for the prestigious Outland Trophy, which recognizes the best interior lineman in college football. Selected by the Pittsburgh Steelers in the first round of the 1998 NFL draft, Mr. Faneca was named the team's rookie of the year. A fixture on the Steelers' offensive line for ten seasons, Mr. Faneca earned a Super Bowl ring in 2006. In 2007, Steeler fans elected him to the Steelers' 75th Anniversary All Time Team. Mr. Faneca left the Steelers in 2008 for two seasons with the New York Jets and joined the Arizona Cardinals for his final season in 2010. He was named to the Pro Bowl every year from 2001 through 2009. Since retiring from professional football, Mr. Faneca has been a tireless advocate for epilepsy research.

Ben Hamilton played ten seasons in the NFL as an offensive lineman for the Denver Broncos from 2001 until 2009, and for the Seattle Seahawks in 2010. He was a fourth-round draft pick out of the University of Minnesota. He is currently a high school math teacher at a private Christian high school in Colorado.

Robert Royal played nine seasons in the NFL from 2002 until 2010 with the Washington Redskins, Buffalo Bills, and Cleveland Browns. An All-SEC tight end at Louisiana State University, Mr. Royal averaged nearly ten yards per reception over the course of his NFL career. Mr. Royal now serves as CEO of the Robert Royal Foundation, an organization he founded to promote childhood health, fitness, and education and to combat youth violence. Mr. Royal is also involved in several private equity ventures.

Roderick “Rock” Cartwright played ten seasons in the NFL after a stellar collegiate career at Kansas State University. A fullback and kick return specialist, Mr. Cartwright played with the Washington Redskins from 2002 until 2009 and the Oakland Raiders from 2010 until 2011. In 2006, Mr. Cartwright amassed 1,541 kick-off return yards, setting a Redskins record. Since retiring from the NFL, Mr. Cartwright has actively involved himself in charity work, volunteering at a summer sports camp hosted by the Robert Royal Foundation, among others. Mr. Cartwright is also a manager with Cartwright Energy Partners LLC, an oil production development firm.

Jeff Rohrer, a second-round draft pick out of Yale University, played seven seasons in the NFL with the Dallas Cowboys from 1982 until 1989. An outside linebacker, Mr. Rohrer received All-Ivy League honors and was the Cowboys’ second- and third-leading tackler in 1986 and 1987, respectively. Since retiring from the NFL, Mr. Rohrer has worked in the film industry. He is currently a partner and executive producer at Recommended, a Los Angeles-based production company.

Sean Considine played eight seasons in the NFL as a strong safety and on special teams from 2005 until 2012. After attending the University of Iowa, Mr. Considine was drafted by the Philadelphia Eagles and played four seasons with them and then two seasons with the

Jacksonville Jaguars. In 2011, he signed with the Carolina Panthers, finishing that season with the Arizona Cardinals. Mr. Considine joined the Baltimore Ravens in 2012, earning a Super Bowl ring. Since retiring from professional football, Mr. Considine has been active with numerous charities in his hometown and recently became a small business owner.

Since leaving the NFL, Intervenors each have experienced one or more of a wide range of symptoms linked to repetitive mild traumatic brain injury (“MTBI”), including a sensitivity to noise, visuospatial issues, visual impairment, chronic pain, executive function deficit, episodic depression, mood and personality changes, chronic headaches, dysnomia, a decreased ability to multi-task, peripheral nerve dysfunction (numbness, burning, and/or tingling), cervical spinal disorders, sleep dysfunction, attention and concentration deficits, short- and long-term memory deficits, and somatic disorders. Additionally, under certain circumstances some of the Intervenors also have experienced a decreased ability to interpret, regulate, express, or control complex emotions. These precise conditions have been associated with CTE and may broaden or intensify.

Although the Intervenors’ claims for their injuries would be released by the settlement that was proposed and advocated by Representative Plaintiffs and their counsel, none would qualify for any relief under the settlement beyond participation in the Baseline Assessment Program (BAP). And the BAP – which measures cognitive deficits such as memory impairment and loss of attention – did not even screen for many of these neurobehavioral conditions or neuropsychiatric presentations.

II. The Class Action Complaint

The Class Action Complaint (“Complaint”), attached to the accompanying Motion as Exhibit A, defines a class consisting of all living NFL players who have retired from the NFL before preliminary approval of the proposed settlement agreement as well as the legal

representatives of such players who have died or become legally incapacitated. Compl. ¶¶ 1, 16. The class also includes spouses, parents, dependent children, and any other person who under state law may sue the NFL by virtue of his or her relationship with the retired player. *Id.* The Complaint further divides the class into two sub-classes. Subclass 1 consists of all retired players (and their representative and derivative claimants) who “were not diagnosed with dementia, Alzheimer’s Disease, Parkinson’s Disease, ALS and/or Death with CTE prior to the date of the Preliminary Approval and Class Certification Order.” *Id.* ¶ 17(a). Subclass 2 consists of all retired players (and their representative and derivative claimants) who “were diagnosed with dementia, Alzheimer’s Disease, Parkinson’s Disease, ALS and/or Death with CTE prior to the date of the Preliminary Approval and Class Certification Order.” *Id.* ¶ 17(b). Subclass 2 also includes the representative and derivative claimants of retired players who died before preliminary approval of the settlement and who received a post-mortem diagnosis of Death with CTE. *Id.*

The Complaint names Shawn Wooden and Kevin Turner as the Representative Plaintiffs for the class. Mr. Wooden represents Subclass 1. Compl. ¶ 17(a). A safety, Mr. Wooden played in the NFL from 1996 until 2004 with the Miami Dolphins and the Chicago Bears. *Id.* ¶ 4. He is alleged to have “experienced” unspecified “neurological symptoms” but “has not been diagnosed with any neurocognitive impairment.” *Id.* The Complaint states that Mr. Wooden has an “increased risk of developing dementia, Alzheimer’s, Parkinson’s, or ALS.” *Id.* ***Mr. Wooden does not plead an increased risk of developing CTE.*** *Id.* Mr. Turner represents Subclass 2. *Id.* ¶ 17(b). A running back, Mr. Turner played in the NFL from 1992 until 1999 with the New England Patriots and the Philadelphia Eagles. *Id.* ¶ 7. He was diagnosed with ALS in 2010. *Id.*

The Complaint alleges that the NFL voluntarily undertook a duty to inform its players of the risks resulting from repeated concussive and sub-concussive head impacts and to provide its players with advice concerning the treatment and prevention of head injuries. Compl. ¶¶ 128-199. It alleges that the NFL not only performed this task negligently, but also purposefully spread misinformation to conceal from its players the risks of repetitive head trauma. *Id.* Not only did the NFL's concealment delay players from seeking and receiving adequate medical treatment for the injuries they sustained while playing, *id.* ¶ 285, the NFL's behavior forced players to incur an increased, additional incremental risk of permanent brain damage with every mismanaged concussion.

The Complaint also pleads a causal connection between football and neurodegenerative disease. Compl. ¶¶ 54-88. It identifies several studies demonstrating that the repeated head injuries or concussions sustained during an NFL player's career cause severe neurological problems such as depression, dementia, and other neurodegenerative diseases. *Id.*¹ It alleges the NFL's knowledge of these studies and the link between MTBI and neurodegenerative disease, describing the NFL's efforts to intentionally conceal and cover up these dangers. *Id.* ¶¶ 89-199. Specifically, the Complaint alleges that in 1994 the NFL established a committee of experts to study brain injury in football (the MTBI Committee), which published reports and reached conclusions inconsistent with the weight of scientific evidence and which concealed from players the true risks of continued head trauma. *Id.*

¹ Indeed, at least one study has "confirm[ed] the presence of acute pathological changes in the brain that can occur from . . . blows to the head that are below the threshold for producing what behaviorally would be classified as a concussion." Erin D. Bigler, *Neuropsychology and Clinical Neuroscience of Persistent Post-Concussive Syndrome*, 14 J. Int'l Neuropsychological Soc'y 1, 7 (2008).

Complaints filed against the NFL in other courts have also alleged that the NFL's actions exacerbated the injuries that players sustained while playing football. For example, the complaint in *Finn v. National Football League* describes the routine pre-game mass administration of Toradol, a blood-thinning pain-killer, to players without their informed consent regarding the health risks of the drug. Complaint, *Finn v. Nat'l Football League*, No. 2:11-cv-07067-JLL-MAH, ¶¶ 135-143 (D.N.J. Dec. 8, 2011) (Dkt. 4) ("Finn Compl."). Toradol's use typically is limited to the surgical setting, and several European countries have banned it. Sally Jenkins & Rick Maese, *Pain and Pain Management in NFL Spawn a Culture of Prescription Drug Use and Abuse*, The Washington Post (Apr. 13, 2013);² see also United Nations Department of Economic and Social Affairs, *Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments* 156-57 (2005) (entry for ketorolac).³

Because Toradol has blood-thinning properties, it is contraindicated for "patients . . . at high risk of bleeding" and presents an increased risk of stroke. *Finn Compl.* ¶ 137; see also Roche, FDA-Mandated Warning Label for Toradol, at 1-2.⁴ On top of those risks, Toradol "mask[s] pain" and "prevent[s] the feeling of injury," *Finn Compl.* ¶¶ 135, 140, which makes it more likely that a player will report that he feels no or little pain from a precise trauma and then return to play. Because "a prior concussion increases the likelihood of a second concussion," Bigler, *supra*, at 8, the routine administration of Toradol compounded the risk that players would

² Available at http://www.washingtonpost.com/sports/redskins/pain-and-pain-management-in-nfl-spawn-a-culture-of-prescription-drug-use-and-abuse/2013/04/13/3b36f4de-a1e9-11e2-bd52-614156372695_story.html.

³ Available at <http://www.un.org/esa/coordination/CL12.pdf>.

⁴ Available at http://www.accessdata.fda.gov/drugsatfda_docs/label/2013/019645s019lbl.pdf.

suffer multiple instances of head trauma in a single game or practice.⁵ The Intervenors include players who have received those Toradol injections.

The Complaint specifically identifies several long-term injuries arising from MTBI, “including, *but not limited to* memory loss, dementia, Alzheimer’s Disease, Parkinson’s Disease, ALS, depression, and CTE and its related symptoms.” Compl. ¶ 127 (emphasis added). “CTE is the long-term neurological consequence of repetitive mild TBI.” Barry D. Jordan, *The Clinical Spectrum of Sport-Related Traumatic Brain Injury*, 9 Nature Reviews Neurology 222, 225 (2013). The condition results from the build-up in the brain of mis-folded tau protein. Neal Emery, *How to Diagnose a Battered Brain Before It’s Too Late*, The Atlantic (May 8, 2012);⁶ A.C. McKee *et al.*, *The Spectrum of Disease in Chronic Traumatic Encephalopathy*, Brain: A Journal of Neurology 3 (Dec. 2012). More extensive tau build-up indicates a more advanced stage of CTE. Jordan, *supra*, at 227 (Box 5).

Currently, doctors can only diagnose CTE through a post-mortem brain autopsy. Jordan, *supra*, at 226.⁷ Nevertheless, researchers have identified pre-death clinical presentations of CTE. Among others, these presentations include: aggression, agitation, impulsivity, depression, suicidality, impaired attention or concentration, memory problems, executive dysfunction, dementia, and language impairment. *Id.*; McKee, *supra*, at 10, 13-14, 16-17. While some of

⁵ A prior concussion also results in a “greater morbidity of the second concussion.” Bigler, *supra*, at 8.

⁶ Available at <http://www.theatlantic.com/health/archive/2012/05/how-to-diagnose-a-battered-brain-before-its-too-late/256877/>.

⁷ But see footnote 14, *infra*. Scientific advances may soon make CTE detectable before death.

those conditions appear more pronounced in advanced Stage III and Stage IV CTE, suicidality presents at all stages. McKee, *supra*, at 10, 13-14, 16-17.⁸

Limited studies thus far have shown CTE to be present regularly in the brains of NFL players. Of the 34 deceased NFL retirees whose brains have been tested for CTE, 33 had the disease. McKee, *supra*, at 17. Of those 33, nearly half showed signs of Stage III or Stage IV CTE – CTE’s two most severe stages. *Id.* And almost all of these players – 94% – were symptomatic during their lifetimes. *Id.* The most common symptoms were short-term memory loss, executive dysfunction, and attention and concentration problems. *Id.* As described above, Intervenors currently exhibit these conditions, which other complaints filed against the NFL have identified as injuries linked to MTBI. See *Finn Compl.* ¶ 36 (identifying “memory loss, confusion, impaired judgment, paranoia, impulse control problems, aggression, [and] depression” as afflictions resulting from football-related MTBI).

III. The Proposed Settlement

The Representative Plaintiffs filed their settlement proposal and motion for preliminary approval on January 6, 2014. See Dkt. No. 5634. Notwithstanding the breadth of afflictions linked to MTBI, that settlement compensated only a few diseases. ALS claimants were to receive a maximum award of \$5 million. Settlement Ex. 3. Retired players diagnosed with

⁸ Junior Seau and Dave Duerson – two prominent former NFL players – committed suicide by shooting themselves in the heart in order to preserve their brains for study. See Nathaniel Penn, *The Violent Life and Sudden Death of Junior Seau*, GQ (Sept. 2003), <http://www.gq.com/entertainment/sports/201309/junior-seau-nfl-death-concussions-brain-injury>; Paul Solotaroff, *Dave Duerson: The Ferocious Life and Tragic Death of a Super Bowl Star*, Men’s Journal (May 2011), <http://www.mensjournal.com/magazine/dave-duerson-the-ferocious-life-and-tragic-death-of-a-super-bowl-star-20121002>. Before committing suicide, Seau battled insomnia, headaches, dizziness, and other conditions linked to CTE. Penn, *supra*. Like Seau, Duerson also showed signs of CTE before his suicide, which manifested as “starburst headaches,” blurred vision, and short-term memory deficits. Solotaroff, *supra*.

Parkinson's Disease or Alzheimer's Disease were to receive a maximum \$3.5 million award. *Id.* And class members exhibiting Level 2 or Level 1.5 dementia were to receive at most \$3 million or \$1.5 million, respectively. *Id.* The settlement also compensated cases of CTE with a maximum \$4 million award, *but only if the retired player died before preliminary approval* of the settlement. Settlement §§ 2.1(xxx), 6.3 & Ex. 1 ¶ 5. Players suffering from CTE who died after that date were to receive nothing. Moreover, players suffering from the clinical presentations of CTE were to receive no compensation under the settlement unless they independently qualified for compensation through a diagnosis of Level 1.5 or Level 2 dementia. *Id.* § 6.3.

The settlement also articulated a schedule of offsets that could reduce a claimant's award. For example, class members who played fewer seasons in the NFL or who were older at the time of the qualifying diagnosis were to receive only a percentage of the maximum award for their condition. *See* Settlement Ex. 5. Additionally, any player who suffered a *single* stroke or a *single* instance of traumatic brain injury after his playing career ended was to receive a 75% offset – that is, such a player would recover only 25% of what he was otherwise entitled to receive under the settlement. Settlement § 6.5(b)(ii)-(iii).

The settlement also would have barred any and all MTBI-related claims of every retired NFL player who did not opt out of the settlement. Class members would:

waive and release . . . any and all past, present and future claims, counterclaims, actions, rights or causes of action . . . in law or in equity . . . known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated [that any settling plaintiff] had, has, or may have in the future arising out of, in any way relating to or in connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits . . .

Settlement § 18.1(a). That release required class members to acknowledge that they “explicitly took unknown or unsuspected claims into account in entering into the Settlement Agreement and it is the intention of the Parties fully, finally and forever to settle and release all Claims” falling within the scope of the allegations in the Complaint and related lawsuits. *Id.* § 18.2. This includes not only claims against the NFL but also, with no explanation, claims of players who accept a monetary award under the proposed settlement that are (or could be) brought against the National Collegiate Athletic Association (“NCAA”). *Id.* § 18.5. The NCAA was not named as a defendant in any of the underlying lawsuits filed in this MDL proceeding.⁹

On January 14, 2014, this Court denied Co-Lead Class Counsel’s motion for preliminary approval of the settlement, declining to find that the settlement “has no obvious deficiencies, grants no preferential treatment to segments of the class, and falls within the range of possible approval.” Dkt. No. 5657 at 10 (quotation marks omitted). Instead, the Court recognized that the “Monetary Award Fund may lack the necessary funds to pay Monetary Awards for Qualifying Diagnoses” and “order[ed] the parties to share the [actuarial and economic] documentation” relied upon during settlement “with the Court through the Special Master.” *Id.* at 10, 12.

ARGUMENT

When parties propose a class-wide settlement before class certification, a putative class member seeking to ensure adequate representation of its interests may move to intervene. Fed. R. Civ. P. 24. Generally, a court should interpret the requirements for establishing intervention “broadly” and in favor of its occurrence. *United States v. City of Los Angeles*, 288 F.3d 391, 397

⁹ Claims against the NCAA for injuries arising from concussions are the subject of a separate multidistrict litigation. See *In re Nat'l Coll. Athletic Ass'n Student-Athlete Concussion Injury Litig.*, MDL No. 2492, 1:13-cv-09116 (N.D. Ill.).

(9th Cir. 2002) (quotation marks omitted); *see also United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1180 (3d Cir. 1994) (noting 1966 amendments to Rule 24 were made to “facilitate intervention”). “Doubts regarding the propriety of permitting intervention should be resolved in favor of allowing it, because this serves the judicial system’s interest in resolving all related controversies in a single action.” *Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992); *see also Kozak v. Wells*, 278 F.2d 104, 112 (8th Cir. 1960); *Koprowski v. Wistar Inst. of Anatomy & Biology*, No. CIV. A. 92-CV-1182, 1993 WL 332061, at *2 (E.D. Pa. Aug. 19, 1993). All of these purposes are well-served by allowing intervention here.

I. This Court Should Grant Intervenors’ Motion Under Rule 24(a) To Ensure Adequate Protection of Their Interests and Those of Similarly Situated Putative Class Members

Under Rule 24(a), intervention as of right is permitted where (1) the proposed intervenor is not adequately represented by an existing party in the litigation; (2) he has a sufficient interest in the litigation; (3) that interest may be affected or impaired by the disposition of the action; and (4) his application is timely. Fed. R. Civ. P. 24(a); *Alcan Aluminum*, 25 F.3d at 1181-83; *see also Brody v. Spang*, 957 F.2d 1108, 1115 (3d Cir. 1992). “In the class action context, the second and third prongs” – that the intervenor have a sufficient interest in the litigation that is affected or impaired by the disposition of the case – “are satisfied by the very nature of Rule 23 representative litigation.” *In re Cnty. Bank of N. Va.*, 418 F.3d 277, 314 (3d Cir. 2005); *see also Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 474936, at *3 n.1 (N.D. Cal. Jan. 17, 2007) (quoting *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1405 n.1 (9th Cir.

1989)).¹⁰ Thus, intervention is proper if the existing parties to the litigation do not adequately represent the Intervenors' interests and if Intervenors' application is timely.

Under this standard, Intervenors have the right to intervene on behalf of players suffering from MTBI-related conditions, including symptoms of CTE, who would have received no monetary compensation under the proposed settlement. No existing party to the litigation adequately represents their interests and, in fact, those interests have been compromised. Because the settlement would have compensated only a small subset of MTBI-related conditions to the exclusion of the others, there is a conflict of interest between the class representatives and many class members. Intervenors' application is also timely, coming even before the settling parties have resubmitted the settlement for preliminary approval and just four months after the settling parties publicly revealed the details of the settlement.

A. Intervenors' Interests – and Those of Players Like Them – Are Not Currently Represented Before the Court

On a motion to intervene under Rule 24, the burden of showing inadequate representation "should be treated as minimal." *In re Safeguard Scientifics*, 220 F.R.D. 43, 48 (E.D. Pa. 2004) (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). The "linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class." *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 183 (3d Cir. 2012); see also *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.*, 55 F.3d 768, 800 (3d Cir. 1995) ("GM Trucks").

¹⁰ Intervenors' interests in this putative class action are no exception. The parties in this case have reached a settlement that would globally dispose of all class members' MTBI-related claims against the NFL but would leave players like Intervenors uncompensated for their injuries. They thus have a clear interest that would be substantially impaired if the settlement – as it now stands – is eventually approved.

Intervenors' interests do not align with those of the Representative Plaintiffs for at least two reasons, either of which justifies intervention. First, Intervenors' MTBI-related afflictions – afflictions from which the Representative Plaintiffs do not claim to suffer and for which they have not sought relief – would have received no monetary compensation under the settlement. Second, the settlement would have imposed a stark 75% offset for instances of stroke – a medical condition that Intervenors are at increased risk of suffering as a result of the NFL's own conduct in administering Toradol to players. Thus, Intervenors have more than satisfied their burden of showing that their interests are not adequately represented. *See Fed. R. Civ. P.* 24(a)(2); *id.* (Advisory Committee Note to 1966 Amendment); *see also Cnty. Bank*, 418 F.3d at 314-15; *Diaz*, 876 F.2d at 1405 n.1; *Glass*, 2007 WL 474936, at *3 n.1.

- 1. Representative Plaintiffs Negotiated and Advocated a Settlement That Addressed Their Own Injuries but Failed To Address the Injuries of Intervenors and Other Class Members**

The settlement would have compensated only a small subset of MTBI-related injuries to the exclusion of all others, creating conflict between the interests of those who suffer from compensated injuries and those whose injuries go without relief. *See Dewey*, 681 F.3d at 183. As a result of their NFL careers, the Intervenors suffer from a range of significant medical conditions: visuospatial difficulties, executive function deficit, chronic headaches, dysnomia, decreased emotional stability, increased impulsivity, and attention and concentration deficits. None of these conditions would receive compensation or medical treatment under the settlement. The failure to compensate or treat these afflictions is made more notable by Co-Lead Class Counsels' own recognition of the links between MTBI and these uncompensated conditions. *See, e.g.*, Compl. ¶ 127 (noting "MTBI can and does lead to long-term brain injury, ***including, but not limited to, memory loss***, dementia, Alzheimer's Disease, Parkinson's Disease, ALS,

depression, and CTE and *its related symptoms.*” (emphasis added)); *Finn Compl.* ¶¶ 36, 100-145.¹¹

The disparate – and arbitrary – treatment of class members suffering from these uncompensated afflictions is particularly stark in light of the settlement’s framework for compensating CTE. The uncompensated conditions afflicting Intervenors are among the well-documented symptoms of CTE. McKee, *supra*, at 18; Jordan, *supra*, at 226-27. And while CTE found in a retired player who died on the eve of preliminary approval would have been the basis for a \$4 million payment, that same condition would have gone uncompensated if the player died one day later, after preliminary approval. That is because the settlement defined “qualifying diagnosis” to include “a post-mortem diagnosis . . . of CTE” *only* “[f]or Retired NFL Football Players who died prior to the date of the Preliminary Approval and Class Certification Order.” Settlement Ex. 1 ¶ 5; *see also* Settlement ¶¶ 2.1(xxx), 6.2(a). Thus, former players like the Intervenors who are currently managing the cumulative effects of MTBI – many of which are consistent with the presentation of CTE – would have received no compensation and would continue bearing their medical costs even if their condition progressed to full-blown CTE.

That limitation on CTE compensation is remarkable: Given that 33 of the 34 deceased NFL players whose brains have been examined for CTE have been diagnosed with the condition, one of the lead CTE researchers has wondered whether “every single football player doesn’t have” CTE.¹² Yet notwithstanding the widespread prevalence of CTE among NFL retirees, the settlement provided *no compensation* to players with CTE who die after preliminary approval of

¹¹ Co-Lead Class Counsel is one of the attorneys representing the plaintiffs in *Finn*.

¹² Frontline, transcript of *League of Denial: The NFL’s Concussion Crisis*, <http://www.pbs.org/wgbh/pages/frontline/sports/league-of-denial/transcript-50/>.

the settlement – likely a large percentage of the 20,000-member putative class.¹³ Co-Lead Class Counsel have never explained or justified the basis for such a stark difference in treatment among players suffering from the exact same MTBI-related condition.

The consequences of denying compensation to class members like the Intervenors will multiply over time. Many diseases linked to MTBI exhibit variable latency periods, meaning that the symptoms of MTBI-related afflictions will present earlier in retirement for some former NFL players than for others. Steven T. DeKosky *et al.*, *Traumatic Brain Injury – Football, Warfare, and Long-Term Effects*, The New England Journal of Medicine 1293, 1293-94 (2010). As science advances, moreover, it is likely that MTBI will be shown to correlate with additional diseases, and that CTE will be detectable before death.¹⁴ Yet the settlement provided no flexibility for adding to the list of qualifying diseases or compensating new conditions. See

¹³ In theory, a retired player suffering from CTE could receive compensation through an independent qualifying diagnosis of, for example, Level 1.5 dementia. But dementia does not always accompany the injuries that Intervenors have suffered and not all stages of CTE exhibit dementia. In one study, for example, no individual presenting with Stage I or II CTE showed signs of dementia despite showing symptoms similar to those that Intervenors are experiencing. McKee, *supra*, at 10, 13. Even some players with advanced stages of CTE *still* were not considered cognitively impaired. *Id.* at 14 (noting 25% of the individuals diagnosed with stage III CTE were not considered cognitively impaired). Indeed, it seems apparent from what is known about the behavior and symptoms of some deceased football players found to have CTE, such as Junior Seau and Dave Duerson, that at least some (and perhaps many) of those deceased players would not have qualified for compensation at all had they not died before preliminary approval of the settlement.

¹⁴ The likelihood that scientific advancements will soon allow for testing of tau protein build-up in a living brain – and therefore allow detection of CTE before the retired player dies – is high. See Emery, *supra* (noting “pilot studies show promise for [using] diagnostic MRI and MRS scans [to diagnose CTE] as brain imaging technology improves”). Indeed, several researchers have already identified chemicals that bind tau protein in living brain tissue. M. Maruyama *et al.*, *Imaging of Tau Pathology in a Tauopathy Mouse Model and in Alzheimer Patients Compared to Normal Controls*, 79 Neuron 1094 (2013); W. Zhang, *A Highly Selective and Specific PET Tracer for Imaging of Tau Pathologies*, 31 J. Alzheimers Disease 601 (2012); see also Mark Hollmer, *Alzheimer’s Diagnosis May Gain from PET Imaging of Tau Proteins*, FierceDiagnostics (Sept. 20, 2013), <http://www.fiercediagnostics.com/story/alzheimers-diagnosis-may-gain-pet-imaging-tau-proteins/2013-09-20>.

Settlement § 6.4(a) (“In no event will modifications be made to the Monetary Award levels in the Monetary Award Grid, except for inflation adjustment(s).”). Class members in Intervenors’ shoes thus have a strong need for representatives who will press for settlement “provisions that can keep pace with changing science and medicine, rather than freezing in place the science” known at the time of settlement. *Dewey*, 681 F.3d at 182 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 610-11 (1997)).

The Representative Plaintiffs cannot fulfill that role. Neither of the Representative Plaintiffs shares the Intervenors’ interests in securing compensation for other MTBI-related conditions and for *all cases* of CTE. Mr. Turner, who suffers from ALS, has a diagnosed medical condition the parties specifically intend to compensate under the settlement (and rightly so). Compl. ¶ 7. But he is not poised to represent the interests of those who have suffered different injuries and would have received nothing under the proposed settlement. Neither is Mr. Wooden. Intervenors presently exhibit MTBI-related injuries that are clinical indications of CTE. Mr. Wooden, by contrast, has not alleged that he suffers from any MTBI-related affliction. Nor has he alleged that he is at “[an] increased risk of developing” CTE, even though he does assert such a risk for dementia, Alzheimer’s Disease, Parkinson’s Disease, and ALS. Compl. ¶ 4. Mr. Wooden’s interests therefore lie in securing future compensation for those four afflictions, not in securing payment for the conditions experienced by the Intervenors.¹⁵

¹⁵ Even if Mr. Wooden were to now report that he, too, suffers from the conditions affecting Intervenors or that he fears the onset of CTE, he cannot reliably represent those interests going forward: He has abdicated any responsibility to those interests by advocating a proposed settlement that ignores those injuries.

2. The 75% Offset for Stroke and Traumatic Brain Injury Also Demonstrates Conflict Between the Intervenors' Interests and Those of the Representative Plaintiffs

The proposed settlement also would have provided for offsets that create conflict between Intervenors' interests and those of the Representative Plaintiffs. *See Dewey*, 681 F.3d at 183. The proposed settlement imposed a *75% offset* for a *single instance* of non-football-related traumatic brain injury ("TBI") or stroke occurring after the player's NFL career has ended. Settlement § 6.5(b)(ii). That 75% offset applied regardless of the severity of traumatic brain injury that the player sustained while playing football. And it presumed that a single non-football-related instance of TBI accounts for 75% of a player's MTBI-related injuries, even though that player may have sustained numerous diagnosed and undiagnosed head traumas throughout his NFL career. That is both devoid of scientific justification and grossly unfair.

Instances of stroke, moreover, should be compensated injuries, not offsets that reduce recovery, *because the NFL itself has increased Intervenors' risk of stroke*. *See Finn Compl.* ¶¶ 135-143. NFL-administered Toradol injections increased that risk in two ways. First, as a pain-killer, Toradol masks injuries that players may have suffered, encouraging their continued participation in the game and increasing the risk that a player would suffer multiple instances of MTBI in one game. Second, MTBI suffered after a Toradol injection occurs at a time when the cerebrovascular architecture of the brain is particularly weak. *See Bigler, supra*, at 8 (noting that "in TBI the same mechanisms that stretch the neuron can stretch the blood vessel [which] may impair the neurogenic response of the blood vessel"). Toradol is a powerful blood-thinner that increases the risk of stroke and micro-hemorrhaging in players under Toradol's effect. *Finn Compl.* ¶¶ 135-143; *see also* FDA-Mandated Warning Label, at 1.

Large groups of players who weekly received pre-game Toradol injections thus suffered repetitive MTBI at a time when their brains were most susceptible to permanent damage and

injury. That damage itself enhances a retired player's risk of experiencing a stroke later in life.

See James F. Burke et al., Traumatic Brain Injury May Be an Independent Risk Factor for Stroke, Neurology (June 26, 2013). On top of these effects, the effects of sustained, long-term use of Toradol are completely unknown. *See Eddie Matz, Stick Route*, ESPN The Magazine (Nov. 28, 2011).¹⁶ Thus, the NFL's own negligent and fraudulent actions have contributed to the prevalence of stroke among retired players. Co-Lead Class Counsel knew of these allegations – indeed, he represents the *Finn* plaintiffs – yet the settlement makes no mention of these injuries except to release any claims for them and to inexplicably select them as bases for reducing the retired player's compensation.

As with the Intervenors' interests in securing compensation for CTE and its related symptoms, the Representative Plaintiffs do not adequately represent Intervenors' interests in eliminating or reducing the offset related to stroke and post-NFL TBI. Neither Mr. Turner nor Mr. Wooden claims an increased risk of stroke through NFL-administered Toradol use. As a result, neither can adequately represent those Intervenors who some day may suffer such a stroke – and the resulting drop in compensation under the proposed settlement – as a result of the NFL's own conduct.¹⁷

* * * * *

¹⁶ Available at http://espn.go.com/nfl/story/_/id/7243606/nfl-players-tony-romo-ronde-barber-rely-new-painkiller-toradol.

¹⁷ The proposed settlement was flawed in other ways. For example, it required claimants to register within a mere 180 days from its effective date, disallowing any claims from class members who do not so register. Settlement §§ 4.2(c), 6.2(a). And as this Court has noted, the proposed settlement's release extended to claims against the NCAA, a non-party to the suit. Dkt. No. 5657 at 10 n.6. Derivative claimants, notwithstanding the independent injuries they have suffered, were to receive a mere 1% recovery. Settlement § 7.3

The “linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class.” *Dewey*, 681 F.3d at 183. Intervenors’ interests and the Representative Plaintiffs’ interests simply do not align. *Compare Sullivan v. DB Invs., Inc.*, No. CIV.A. 04-2819, 2006 WL 892707 (D.N.J. Apr. 6, 2006) (finding representation adequate where subclasses within the settlement were vigorously and independently represented). In fact, they conflict. While the Representative Plaintiffs’ interests lie in securing present and future payment for certain MTBI-related diseases – specifically, those for which Mr. Wooden has alleged an increase risk – the Intervenors’ interests lie in securing present and future payment for *other* MTBI-related conditions. *See Amchem*, 521 U.S. at 620-21. The Court should therefore grant the Intervenors party status for the purpose of ensuring that the views of retired players suffering from these conditions – which may progress to CTE – are represented in the settlement process.

B. The Intervenors’ Request Is Timely and Will Neither Prejudice the Parties Nor Cause Undue Delay

Timeliness, in this context, is not merely a matter of counting days or months; instead, it is viewed under the totality of the circumstances. *See Alcan Aluminum*, 25 F.3d at 1182; *see also NAACP v. New York*, 413 U.S. 345, 365-66 (1973) (“[T]he point to which [a] suit has progressed is one factor in the determination of timeliness, [but] it is not solely dispositive”; rather, it “is to be determined from all the circumstances . . . by the court in the exercise of its sound discretion.”). Because only when “‘the existence and limits of the class have been established and notice of membership has been sent out does a class member have any duty to take note of the suit or to exercise any responsibility with respect to it,’” the “time frame in which a class member may file a motion to intervene challenging the adequacy of class representation must be at least as long as the time in which s/he may opt-out of the class.” *Cnty. Bank*, 418 F.3d at 314

(quoting *McKowan Lowe & Co. v. Jasmine, Ltd.*, 295 F.3d 380, 384 (3d Cir. 2002)). The Intervenors amply satisfy the timeliness requirement here. Aware of both the specific terms of the settlement agreement and their inability to recover under it, Intervenors properly move to intervene well before “the time in which [they] may opt-out of the class” – indeed, they are acting before any class has been certified. *Cnty. Bank*, 418 F.3d at 314.

The procedural posture of this case highlights the timeliness of Intervenors’ motion and the present need for their participation. Preliminary approval of a class settlement would create a presumption that the settlement is fair. *GM Trucks*, 55 F.3d at 785. Thus, preliminary approval itself impairs Intervenors’ rights. Allowing Intervenors’ participation in the case after conditional class certification, which accompanies preliminary approval, would deprive Intervenors of the right to voice their interests before the Court decides those issues. Intervention after preliminary approval would therefore come too late. As *GM Trucks* explained, “‘where notice of the class action is . . . sent simultaneously with the notice of the settlement itself, the class members are presented with what looks like a fait accompli.’” *Id.* at 789 (alterations omitted) (quoting *Mars Steel v. Cont'l Ill. Nat'l Bank & Trust*, 834 F.2d 677, 680-81 (7th Cir. 1987)).

Moreover, intervention at this time would not prejudice the parties or cause undue delay. The critical inquiry when assessing delay or prejudice is “what proceedings of substance on the merits have occurred,” such as whether there have been a large number of “depositions taken, dispositive motions filed, or decrees entered.” *Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369-70 (3d Cir. 1995). From a procedural perspective, this is a young case. There has been little motion practice, absolutely no fact or expert discovery, and nothing in the way of trial preparation. Thus, granting intervention will not reopen matters that have been fully resolved or require a reopening of discovery or an extensive re-examination of

factors already considered. Should an examination of some issues already considered be necessary, it can occur simultaneously with the study by the Special Master. If anything, Intervenors' involvement can better ensure that all segments of the proposed settlement class are heard, and that the Special Master is not provided only those materials that support the proposed settlement. *Cf. Lusardi v. Xerox Corp.*, 975 F.2d 964, 984 n.34 (3d Cir. 1992).

In sum, the Intervenors here, far from showing up late to the game, timely seek intervention to address a clear and direct risk of impairment to their – and numerous other putative class members' – rights. Furthermore, they do so without creating a risk of undue delay or prejudice to the parties, as intervention will not require re-litigating any steps already taken, whether in terms of discovery, consideration of issues presented, or court proceedings. Finally, intervention offers the added benefit of moving this litigation more swiftly towards a final resolution with less resistance from segments of the putative settlement class who feel that their interests may not be voiced during the Court's preliminary consideration of the settlement.

II. Alternatively, Permissive Intervention Should Be Granted Under Rule 24(b)

Permissive intervention requires only “a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b). Additionally, the rule requires a court to consider “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Intervenors satisfy these requirements here.

The Intervenors’ claims match those of the other plaintiffs: all seek relief for the NFL’s acts or refusals to act regarding the risks of repeated head trauma and brain injury. They share common questions of law or fact with the main action that are expressly set forth in the Complaint. In short, they are putative class members who would be bound by any settlement that may be approved.

Granting Intervenors' motion will neither prejudice the parties nor cause undue delay. In brief, their motion is timely and granting it here will not interfere with or require repeating any prior proceedings (as there have been few), will not require revisiting discovery already performed (as there has been none), and will not introduce completely new issues into the litigation.

Intervenors will provide a service to the Court and to other members of the class by providing a check against the Representative Plaintiffs and their counsel – who appear not to have pursued the interests of all class members zealously. For example, Class Counsel settled the case without any discovery, making it impossible to appreciate fully the merits – and value – of plaintiffs' claims. *See Cnty. Bank*, 418 F.3d at 307 (finding inadequate representation where, among other things, no formal discovery had occurred); *GM Trucks*, 55 F.3d at 806, 814 (finding class settlement unfair where, among other things, amount of discovery inadequate). Additionally, the procedure by which Co-Lead Class Counsel selected Sub-Class Counsel and the role Sub-Class Counsel played in the negotiations are complete unknowns. In fact, the mediator never states that he met with Sub-Class Counsel individually. *See* Dkt. No. 5634-4 Ex. D ¶¶ 5-7 (repeatedly indicating mediator met with "both sides," in reference to the plaintiffs collectively and the NFL). Nor is the extent of the Representative Plaintiffs' participation in the negotiations – and thus their ability to protect the interests of the class – known. *See Olden v. Gardner*, 294 F. App'x 210, 219 (6th Cir. 2008) (finding class settlement unfair where, among other things, the class representatives "provided no meaningful oversight of the class counsel

during the settlement negotiations"). Further, media reports suggest that Co-Lead Class Counsel has "clashed with his own clients."¹⁸

And the attorneys' fees provision raises additional red flags. First, the NFL agreed not to dispute Co-Lead Class Counsel's fee request, Settlement § 21.1, which "increases the likelihood that class counsel will have bargained away something of value to the class," *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (quotation marks omitted). Second, "fee negotiations [should] be postponed until the settlement [is] judicially approved, not merely until the date the parties allege to have reached an agreement." *GM Trucks*, 55 F.3d at 804. Notwithstanding that warning, the settling parties here negotiated attorneys' fees before even filing the proposed settlement with the Court.

It is evident that the Intervenors' interests here are not adequately represented due to the antagonism between their interests and those of the Representative Plaintiffs. Allowing intervention will ensure that Intervenors' interests are both adequately represented and protected. Accordingly, this Court should allow these retired players to permissively intervene.

III. The Intervenors Have Complied with the Procedural Requirements for Intervention

The purpose of Rule 24's procedural requirements is to "provid[e] notice to the existing parties of the basis and nature of the intervenor's claim." *Phila. Recycling & Transfer Sta., Inc.*, No. Civ. A. 95-4597, 1995 WL 517644, at *3 (E.D. Pa. Aug. 29, 1995); see Fed. R. Civ. P. 24(c). When an intervenor's motion and memorandum have satisfied that purpose, "[l]iberal construction of [Rule 24(c)] is especially appropriate." *Id.* The Intervenors have provided such notice in their Motion to Intervene and accompanying Memorandum. They seek intervention

¹⁸ Steve Fainaru & Mark Fainaru-Wada, *Lawyers Fight Over Settlement Details*, ESPN.com (Jan. 24, 2014, 8:18 PM), http://espn.go.com/espn/otl/story/_/id/10346091/lead-negotiator-facing-strong-opposition-concussion-settlement.

because the Representative Plaintiffs have abandoned their interests, as demonstrated by advocating approval of a settlement that would have released all claims for their MTBI-related afflictions without providing any monetary compensation or medical treatment. Thus, those afflictions either were not considered during settlement negotiations or compensation for those afflictions was bargained away. Regardless of the reason, the Intervenors' interests were not adequately represented.

While Rule 24(c) mentions proposed intervenors attaching a pleading to their motion to intervene, courts have recognized that an independent complaint is not necessary when the proposed intervenor has otherwise given notice of the grounds for intervention as the Intervenors have here. *In re Mapp*, for example, granted intervention in a class action – without a separate complaint – where the “applicants’ motion to intervene was specific enough to inform the parties of the issues at stake in their claim.” No. 85-2745, 1986 WL 8340, at *3 (E.D. Pa. July 25, 1986). *Pereira v. Foot Locker, Inc.* also allowed intervention in a class action – without a separate complaint – because the intervenors “stat[ed] the grounds for their intervention” and “stated that they wish[ed] to intervene as full party plaintiffs and participate in the litigation as such.” No. 07-cv-2157, 2009 WL 4673865, at *5 (E.D. Pa. Dec. 7, 2009). And as the Eleventh Circuit has observed, when a person seeks intervention “only to protect the minority members of the plaintiff-class” because “Lead Counsel [are] not properly representing the interests of these members,” a separate complaint is unnecessary. *Piambino v. Bailey*, 757 F.2d 1112, 1121 (11th Cir. 1985). “Everyone kn[ows] the nature of the [intervenors’] substantive claims” – they are “the very claims Lead Counsel had asserted in their complaint.” *Id.* Because the Intervenors have identified the basis of their intervention, are members of the putative class, and are seeking to intervene only to protect the unrepresented interests of certain class members, the Intervenors

have satisfied the requirements of Rule 24(c).¹⁹ Nevertheless, in an abundance of caution and in technical compliance with Rule 24(c), the Intervenors attach Plaintiffs' Class Action Complaint, which sets forth their claims.²⁰

Should the Court find deficient the Intervenors' attachment of the Class Action Complaint, they request that the Court grant their motion conditional on filing of "a supplemental pleading to be filed within a short period of time." *Phila. Recycling*, 1995 WL 517644, at *3 (citing *WJA Realty, Ltd. P'ship v. Nelson*, 708 F. Supp. 1268, 1272 (S.D. Fla. 1989)).

CONCLUSION

The Representative Plaintiffs are not adequately representing the interests of all members of the class. They have already proposed and advocated a settlement that would provide a monetary benefit to only a small group of class members who were diagnosed with one of four medical conditions, or are deceased with a diagnosis of CTE, yet require all class members to release all claims. The Court should grant Intervenors plaintiff-intervenor status in Civil Action No. 2:14-cv-00029-AB for purposes of participating in settlement negotiations on behalf of retired NFL players who, like themselves, have displayed medical conditions consistent with the

¹⁹ When courts have cited Rule 24(c) in denying a motion to intervene, they have done so when the motion itself does not identify the claims or defenses for which intervention is sought. See *Gaskin ex rel. Gaskin v. Pennsylvania*, 197 F. App'x 141, 143-44 (3d Cir. 2006); *Contawe v. Crescent Heights of Am., Inc.*, No. Civ. A. 04-2304, 2004 WL 2966931, at *8 (E.D. Pa. Dec. 21, 2004); *Lexington Ins. Co. v. Caleco, Inc.*, No. Civ. A. 01-5196, 2003 WL 21652163, at *6 (E.D. Pa. Jan. 25, 2003); see also 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1914 (3d ed. 2013) ("Wright & Miller") (noting that cases strictly applying Rule 24(c) "also ha[ve] discussed reasons of substance why intervention should not be allowed").

²⁰ In the limited context of shareholder derivative litigation, some courts have found it insufficient under Rule 24(c) to rely on the original complaint because shareholder derivative complaints must be verified. E.g., *Abramson v. Pennwood Inv. Corp.*, 392 F.2d 759, 761 (2d Cir. 1968). See generally 7C Wright & Miller § 1914 & n.11. The personal injury and medical monitoring complaint here requires no verification. In any event, requiring an independent complaint setting forth the same claims as the Class Action Complaint would only result in needless duplication and repetition.

symptoms of CTE and are at risk of developing CTE and whose interests are otherwise in conflict with those of Representative Plaintiffs, who have failed to adequately represent them.

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Respectfully submitted,

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